

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S REPLY  
BRIEF**



74-222

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

- - - - - x

LEON SEGAN, :

Plaintiff-Appellant, :

-against- :

DREYFUS CORPORATION, et al., :

Defendants-Appellees. :

- - - - - x

MAR 17 1975

REBUTTAL BRIEF OF DEFENDANTS-APPELLEES  
DREYFUS CORPORATION, STEIN, JOHNSON,  
SMERLING AND GREENE

ROGERS & WELLS  
Attorneys for Defendants

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

----- x  
LEON SEGAN, :  
Plaintiff-Appellant, :  
-against- :  
DREYFUS CORPORATION, et al., :  
Defendants-Appellees. :  
----- x

REBUTTAL BRIEF OF DEFENDANTS-APPELLEES  
DREYFUS CORPORATION, STEIN, JOHNSON,  
SMERLING AND GREENE

In his Reply Brief appellant calls to the Court's attention three cases, said to support his position on this appeal. We disagree.

1. Felton v. Walston & Co., \_\_\_\_ F.2d \_\_\_\_ (2d Cir. 1974), in fact, demonstrates that allegation similar to those with which we are here faced are plainly insufficient to sustain a complaint in a securities fraud case.

2. It will be recalled that the complaint in Felton accused defendants Elias, Riesenbach and Sher of having sold worthless companies to 3 I Co. and of having falsely declared to the investing public that such purchases were a major



viaable acquisition. If anything, such allegations were more specific than those here under review. Yet this Court held those allegations insufficient under Rule 9(b), pointing out that the defendants were entitled to know "'the acts relied upon as constituting the fraud'" (Slip Opinion at 1064).

The Court similarly noted that another defendant, Stitching, was alleged to have sold worthless data bank licenses to 3 I Co. and to have conspired with 3 I Co. to inflate the value of the license. In also rejecting these allegations as legally insufficient, this Court said:

"Why the license was worthless and what was fraudulent about selling assets (even worthless assets) to another corporation are never explained. Allegations such as these scarcely inform a defendant what the plaintiff is talking about, let alone satisfy the standards required by rule 9(b)." (Id. at 1064-65).

It seems clear that under Felton, appellant's complaint is patently insufficient, since it fails to inform either the Court or defendants of the acts relied on as constituting the fraud. It does not even identify the transactions complained of. It is, in fact, nothing more or less than an open-ended, conclusory pleading plainly intended to serve as a springboard for an unlimited investigation into the business affairs of defendants.

2. Nor does Schlick v. Penn-Dixie Cement Cor-

poration, 507 F.2d 374 (2d Cir. 1974) advance plaintiff's position here. A mere description of the allegations of the complaint (507 F.2d at 378-9) makes it clear that the pleading there sustained was far more specific than the complaint here, even as to the ITT transaction. In Schlick, the complaint detailed numerous specific ways in which Penn-Dixie was alleged to have artificially and improperly depressed the value of Continental and to have inflated the value of Penn-Dixie preliminary to a merger between the companies, for the purpose of obtaining for Penn-Dixie a favorable merger exchange ratio. By contrast, the complaint here is barren of any such factual specificity.

3. Webber v. Reynolds Securities Inc., (S.D.N.Y. unreported) is apparently cited by plaintiff only for the proposition that allegations of fraud on information and belief which fail to state the basis of such information and belief, are now proper, and that this Court has sub silento overruled Segal v. Gordon on that point. We do not believe, however, that this Court would overrule Segal v. Gordon, sub silento or otherwise, by passing reference in a footnote. Indeed in the Schlick case, supra, this Court's discussion of the point appears to be basically a restatement of the rule enunciated in Segal. Compare 507 F.2d at 378-79 with 467 F.2d at 606-09.

\* \* \*

We cannot close this rebuttal without at least passing reference to plaintiff's repeated suggestion that neither the deposition of plaintiff nor the interrogatories served by plaintiff in the action were considered by Judge Cannella below. To be sure, through inadvertence the deposition itself was not filed with the Court until after the appeal had been noticed, but the papers submitted in support of the very first motion to dismiss contained references to specific pages of the deposition transcript, correctly summarizing the events which had transpired there (A-26 to 27).

The docket entries themselves establish (A-4) that the interrogatories were filed on December 1, 1972, shortly after defendants filed their first motion to dismiss; and it is clear that the interrogatories were considered by the Court when, on May 11, 1973, it ordered plaintiff to file a more definite statement. Indeed, in the affidavit of plaintiff's counsel, submitted in opposition to defendant's motion to dismiss, he specifically calls the Court's attention to his interrogatories as follows (A-42):

" . . . so that the defendants will be provided with the information upon which I intend to rely in proving my case, I have served upon them a detailed set of Interrogatories, the answers to which will reveal to them the supporting information upon which I intend to rely."

## CONCLUSION

It is respectfully submitted that plaintiff has had more than an adequate opportunity to plead his claims in accordance with Rule 9(b). He has repeatedly declined to do so. The Order of the District Court dismissing the complaint should be affirmed.

Respectfully submitted,

ROGERS & WELLS  
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Of Counsel:

Stanley Godofsky  
Mary C. Daly

CERTIFICATE OF SERVICE

The undersigned, an attorney-at-law admitted to practice in the State of New York and associated with Rogers & Wells, attorneys for movants herein hereby certifies that ~~to~~ true copies of the annexed document were duly served on Paul Weiss, Rifkind, Wharton & Garrison, 345 Park Avenue, New York, N.Y. 10022, Coudert Brothers, 200 Park Avenue, New York, N.Y. 10017, Stroock & Stroock & Lavan, 61 Broadway, New York, N.Y. 10006, Sullivan & Cromwell, 48 Wall Street, New York, N.Y. 10005, Wormser, Kiely, Alessandrone, Mahoney & McCann, 100 Park Avenue, New York, N.Y. 10017, Covington & Burling, 888 Sixteenth Street, N.W., Washington, D.C. 20006 and Kaplan, Kilsheimer & Foley, 122 East 42nd Street, New York, N.Y. 10017 by mailing true copies of the same in properly addressed postpaid envelopes to said attorneys, this 17th day of March, 1975.

  
\_\_\_\_\_  
Mary C. Daly

74-1012

ORIGINAL.

74-1012

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

---

LEON SEGAN,  
Plaintiff-Appellant,

against

DREYFUS CORPORATION, MARINE MIDLAND BANKS, INC.,  
DREYFUS MARINE MIDLAND MANAGEMENT CORP., INTER-  
NATIONAL TELEPHONE AND TELEGRAPH CORP., LAZARD  
FRERES & CO., HOWARD STEIN, RICHARD A.M.C. JOHNSON,  
JULIAN M. SMERLING, LAWRENCE M. GREENE, FELIX G.  
ROHATYN, ANDRE MEYER and THE DREYFUS FUND, INC.,

Defendant-Appellees.

---

On Appeal From the United States District Court,  
For the Southern District of New York

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JOINT APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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Preliminary Statement Inspecting Joint Appendix filed by Plaintiff-Appellant and Defendant-Appellees and additional documents included subject to objections of Plaintiff-Appellant

The within documents are filed by Plaintiff-Appellant and by Defendant-Appellees as a joint appendix on this appeal with the exception of the last two items, Plaintiff's Interrogatories and a Partial Deposition of Plaintiff. These last two items are included at the insistence of Defendants-Appellees and are objected to by Plaintiff-Appellant. Plaintiff-Appellant objects to both upon the ground that they are irrelevant to this Appeal. Plaintiff-Appellant further objects respecting the Partial Deposition upon the grounds that it was never completed and Defendants failed to seek rulings on the propriety of Plaintiff's refusal to furnish certain answers, which refusal is now sought to be utilized on this Appeal.

Filed: 11/21/73

4-11-72

11/3/72 by Htr.

JUDGE CANNIELLA  
72 CIV. 1551

**TITLE OF CASE:**

ATC0224b Ys

**For plaintiff:**

KAPLAN, KITSCHTKE, &amp; FOLEY

122 EAST 42ND Street.

- N.Y. C. R.Y. 10017

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**TABLE 1**

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1

For defendant: Stroock & Stroock & Lavan  
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200 Park Ave. - NYC 10017  
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(defts. Dreyfus Corp., Howard Stein, Richard A.M.C. Johnson, Julian M. Smerling & L.M. Greene)

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISH.
b mailed X	Clerk	1/18/17	Kippen P.	15 -	
g mailed ✓	Marshal	1/18/17	U.S. Tm		15 -
of Action:	Docket fee				
THE COMPANY MAY 1910	Witness fees				
and arose at:	Depositions				

A-3

## Docket Entries

EX SEGAN VS. DREYFUS CORP. ET-AL

JUDGE CANNELLA

PAGE 2

72 CIV. 155

DATE	PROCEEDINGS	Date of Judgment
12-72	FILED COMPLAINT. ISSUED SUMMONS.	
12-72	Filed Stip & Order extending time for dft. Dreyfus Marine Midland Mgmt. Corp., to answer to complaint to 5/29/72. So Ordered Lasker J.	
12-72	Filed Stip & Order extending time for dft. Marine Midland Banks, Inc., to answer to complaint to 5/29/72. So Ordered Lasker J.	
12-72	Filed Stip & Order extending time for dfts. Lazard Freres & Co., Felix G. Rohatyn & Andre Meyer deposition upon plttf, to 5/22/72 & extending time for these dfts. to answer to complaint to 5/29/72. So Ordered Lasker J.	
15-72	Filed summons with marshal's return. Served Dreyfus Corporation by George Erikson on 4/25/72.	
	Also served: Marine Midland Banks, Inc. by D.H. Howard on 4/28/72.	
	" " Dreyfus Marine Midland Mgmt. Corp. by George Erikson on 4/25/72.	
	" " International T&T Corp. by William Donovan on 4/21/72.	
	" " Lazard, Freres & Co. by Mr. Wolf on 4/24/72.	
	" " Howard Stein by George Erikson on 4/25/72.	
	" " Richard A.M.C. Johnson by George Erikson on 4/25/72.	
	" " Julian M. Smerling " " " on 4/25/72.	
	" " Lawrence M. Greene " " " on 4/25/72.	
	" " Felix G. Rohatyn by Mr. Wolf on 4/24/72.	
	" " Andre Meyer by Mr. Wolf on 4/24/72.	
	" " Dreyfus Fund, Inc. by George Erikson on 4/25/72.	
15-72	Filed Dft. Dreyfus Fund Inc. ANSWER.	SS&L
15-72	Filed Stip & Order extending time for dfts. Dreyfus Corp., Howard Stein, Richard A.M.C. Johnson, Julian M. Smerling & Lawrence M. Greene to answer to complaint is 5/29/72. So Ordered Lasker J.	
30-72	Filed Stip & Order extending time for dfts. Dreyfus Corp., H. Stein, Richard A.M.C. Johnson, J.M. Smerling & L. M. Greene to answer to complaint to 7/12/72 So Ordered Cannella J.	
30-72	Filed Stip & Order extending deposition of L. Segan by dfts. Lazard Freres & Co., etc is adjourned to 6/26/72, etc. So Ordered Cannella J.	
1-72	Filed Stip & Order extending time for dft. Dreyfus Marine Midland Mgmt. Corp., to answer to complaint to 7/12/72. So Ordered Cannella J.	
1-72	Filed Stip & Order extending time for dft. Marine Midland Banks Inc. to answer to complaint to 7/12/72. So Ordered Cannella J.	
1-72	Filed Stip & Order extending time for dft. Internat'l Tele. & Telegraph Corp., to answer to complaint to 7/12/72 So Ordered Cannella J.	
29-72	Filed stipulation and order extending dft. Dreyfus Marine Midland Management Corp.'s time to answer complaint to 7/31/72. So ordered. Bricant, J.	
30-72	Filed Stip & Order extending time for dft. Marine Midland Banks Inc. to answer to complaint to 7/31/72. So Ordered Bricant J.	
1-3-72	Filed Stip & Order that the time of dfts. Lazard Freres & Co., Felix G. Rohatyn & Andre Meyer to answer to complaint to 7/31/72. So Ordered Bricant J.	
10-72	Filed Stip & Order that the time for dfts. Dreyfus Corp. Howard Stein, Richard A.M.C. Johnson, Julian M. Smerling & Lawrence M. Greene to answer to complaint to 7/31/72. So Ordered Bricant J.	
20-72	Filed stipulation and order extending dft. Marine Midland Banks, Inc.'s time to answer complaint to 8/31/72. So ordered. Frankel, J.	
31-72	Filed stipulation and order extending dfts. Lazard Freres & Co., Felix G. Rohatyn and Andre Meyer's time to answer complaint to 8/31/72. So ordered. Frankel, J.	
2-72	Filed stipulation and order extending dfts. Dreyfus Corp., Howard Stein, Richard A.M.C. Johnson, Julian M. Smerling & Lawrence M. Greene's time to answer complaint to 8/31/72. So ordered. Frankel, J.	

## Docket Entries

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72 Civil 1551

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	D. C. 110 Rev. Civil Docket Continuation
Aug. 2-72	Filed stipulation and order extending defts. Internatl. Tel. & Tel. Corp.'s time to answer complaint to 8/31/72. So ordered. Frankel, J.	
Aug. 4-72	Filed stipulation and order extending deft. Dreyfus Marine Midland Management Corp.'s time to answer complaint to 8/31/72. So ordered. Frankel, J.	
Aug. 20-72	Filed Stip & Order that the time for deft. Marine Midland Banks, Inc., to answer to complaint is extended to 9/25/72. So Ordered. bauman J.	
Aug. 31-72	Filed Stip & Order that defts. Lazard Freres & Co., Felix G. Rohatyn & Andre Meyer to answer to complaint is extended to 9/25/72.	
sep 1-72	Filed Stip & Order that the time for defts The Dreyfus Corp, Howard Stein, Richard A.M.C. Johnson, Julian M. Smerling and Lawrence M. Greene to answer is extended from 8/31-72 to 9-25-72.	
sep 7-72	Filed Stip and Order that the time for deft Dreyfus Marine Midland Management Corp to answer is extended to 9-25-72. GAGLIARDI, J.	
sep 19-72	Filed Stip & Order that deft. International Telephone & Telegraph Corp., time to answer complaint is extended to 9/25/72. So Ordered. Tenney J.	
sep 22-72	Filed Stip and Order that the firm of Covington & Burling is substituted as attys for deft International Telephone and Telegraph Corp. GAGLIARDI, J.	
sep 26-72	Filed Stip and Order that plff may file an amended complaint on or before 10-20-72 and that the time of defts to move to the complaint (or amended complaint, if timely filed) is extended to 11-20-72. TENNEY, J.	
Oct. 26-72	Filed Notice of Appearance for defts. International Telephone and Telegraph Corp.	
Nov. 1-72	Filed stipulation and order that plaintiff may serve and file an amended complaint on or before 11/6/72, and extending defendants time to answer, etc. the complaint to 11/20/72. So ordered. Cannella, J.	
Nov. 3-72	Filed Amended Complaint - and Jury Demand.	
Nov. 16-72	Filed Affidavit & Notice of Motion by defts Dreyfus Corp., Howard Stein, Richard A.M.C. Johnson, Julian M. Smerling and Lawrence M. Greene for an order pursuant to Rules 12(b) (6) of the FRCP, dismissing the complaint, herein with Dec 18, 1972.	
Nov. 17-72	Filed Memorandum in support of motion to dismiss or for a more definite statement.	
Nov. 20-72	Filed notice of Motion re: dismiss amended complaint, etc. Ret. 12/18/72 in ROOM 1001 at 10 A.M. before Cannella, J.	
Nov. 20-72	Filed notice of Motion re: dismiss complaint, etc. Ret. 12/18/72 in ROOM 1001 at 10 A.M. before Cannella, J.	
Nov. 20-72	Filed stip & order that the time for defts Lazard Freres & Co. Felix G. Rohatyn and Andre Meyer to answer etc. is extended to Dec 6th, 1972.	
Nov. 22-72	Filed Notice of Motion re: Dismiss Amended Complaint.	
Nov. 22-72	Filed Memorandum of defts. International Tel. and Tel. Corp. in support of its motion to dismiss.	
Dec. 1-72	Filed Plaintiff's Interrogatories.	
Dec. 4-72	Filed stipulation and order extending defts. Dreyfus Corp., Stein, Johnson, Smerling and Greene's time to serve written objections or answers to plff's interrogatories pending a decision by the Court of defts motion to dismiss the amended complaint, etc. So ordered. Cannella, J.	
Dec. 5-72	Filed stipulation and order extending defts. Lazard Freres & Co., Felix G. Rohatyn and Andre Meyer's time to answer complaint to ten days subsequent to a ruling on the pending motion to dismiss. So ordered. Cannella, J.	
Dec. 5-72	Filed stipulation and order extending defts. Dreyfus Marine Midland Management Corp's time to respond to plff's Interrogs. dated 11/14/72, to ten days following the filing of an order determining motion ret. 12/18/72, and seeking dismissal of amended complaint, and/or. So ordered. Cannella, J.	
Dec. 14-72	Filed Stip & Order that the following decision by the Court of International Telephone and Telegraph Corp. will confer for the purpose of fixing a date certain for the defts to object to the plff's	

## Docket Entries

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72 CIVIL 1551

DATE	PROCEEDINGS	Date Judge
	interrogatories. So Ordered 12-13-72 CANNELLA, J.	
Dec. 15-72	Filed Pltffs affidavit in opposition to various defts which seeks dismissal of the amended complaint.	
Dec. 15-72	Filed Pltffs memorandum of law in support.	
Dec. 15-72	Filed Stip & Order That following a decision by the Court of the aforementioned defts motion with Judge Cannella will confer for the purpose of fixing a date certain for the deft to object to or answer pltffs aforementioned interrogatories. So Ordered 12-14-72 CANNELLA, J.	
Dec. 18-72	Filed Stip & Order the the defts time to respond to pltffs interrogator dated 11-14-72 is extended 10 days following the filing of an order by this court determining a motion by various defts ret. 12-14-72 So Ordered 12-15-72 CANNELLA, J.	
Dec. 29-72	Filed Reply memorandum in support of defts motion to dismiss or for a more definite statement pursuant to rule 9(b).	
May 11-73	Filed MEMORANDUM- Ordered that the motions for a more definite statement are granted. CANNELLA, J. (mn)	
May 24-73	Filed attys notice of appearance for deft's Lazard Freres Co Rohatyn, & A. Meyer.	
May 29-73	Filed stip & order that time of certain deft's to answer pltff's answers is ext. to 7-1-73. So ordered. Cannella, J.	
May 31-73	Filed stip & order that time which pltff's shall comply to the directions contained in the memorandum decision entered 5-11-73 is ext. to 7-2-73. So ordered. Cannella, J.	
Jul 6-73	Filed stip and order that the time for deft. Dreyfus Marine Midland Management Corp. to answer the complaint is hereby extended to 7/15/73, So Ordered Cannella J.	
Oct 10-73	Filed Affidavit & Notice of Cross Motion by defts Dreyfus Corp. H. Stein, Richard Johnson, J. M. Smerling and J. M. Greene for an order striking the complaint rtble 10-16-73.	
Oct 10-73	Filed defts memorandum (Dreyfus Corp, Stein Johnson Smerling and Greene) in opposition to pltff's motion for discovery and in support of defts motion to dismiss.	
Oct. 11-73	Filed deft. Marine Midland Banks, Inc. notice of cross-motion for an order dismissing the action. Ret. 10-16-73.	
Oct. 11-73	Filed deft. Marine Midland's memorandum in opposition to pltff's motion for discovery and in support of its cross-motion to dismiss.	
Oct. 11-73	Filed deft. Marine Midland Management Corp.'s notice of cross-motion to dismiss Ret. 10-16-73.	
Oct. 10-73	Filed notice of change of firm name to: Rogers & Wells.	
Oct 11-73	Filed affidavit by defts' Lazard Freres & Co., Felix G. Rohatyn & Andre Meyer by Edward N. Contikyan in opposition to pltff's motion for discovery and in support of cross-motion to dismiss.	
Oct. 12-73	Filed notice of motion dismissing action as to I.T.T. Corp. Ret. 10-16-73	
Oct. 12-73	Filed memorandum in support of motion to dismiss	
Oct. 17-73	Filed pltff's affidavit and notice of motion for an order to take discovery, as indicated. Ret. 10-16-73	
Oct. 17-73	Filed pltff's memorandum in support of motion for discovery.	
Oct. 17-73	Filed pltff's affidavit by Vernon G. Foley in reply to defts' opposition to pltff's motion for discovery, as indicated.	
Oct. 25-73	Filed Memorandum the several defts. oppose the motion and cross-move pursuant to Rules 12.(c) and 12.(b) for an order striking the amended complaint and dismissing the action with prejudice because of the pltff's failure to comply with Rule 9(b) and the said order. The pltff's motion is denied. The cross-motions are granted to the extent that the amended complaint is dismissed without prejudice. The pltff's motion for discovery is denied. The defts' motions to strike the complaint and dismiss the action are granted, but without prejudice. So ordered CANNELLA, J. mailed notices.	

### Docket Entries

JUDGE CANNEL

[illegible]

AMENDED COMPLAINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
LEON SEGAN,

Plaintiff,

-against-

DREYFUS CORPORATION, MARINE MIDLAND BANKS, INC.,  
DREYFUS MARINE MIDLAND MANAGEMENT CORP., INTER-  
NATIONAL TELEPHONE AND TELEGRAPH CORP., LAZARD  
FRERES & CO., HOWARD STEIN, RICHARD A.M.C.  
JOHNSON, JULIAN M. SMERLING, LAWRENCE M. GREENE,  
FELIX G. ROHATYN, ANDRE MEYER, AND THE  
DREYFUS FUND, INC.,

AMENDED  
COMPLAINT -  
DERIVATIVE ACTION  
PLAINTIFF DEMAND  
TRIAL BY JURY

72 Civ. 1551

Defendants.

----- X

Plaintiff, by his attorneys, KAPLAN, KILSHEIMER  
& FOLEY, in his own behalf and as a shareholder of Dreyfus Fund,  
Inc., ("Dreyfus Fund"), on behalf of himself and all other share-  
holders of Dreyfus Fund similarly situated and in the right of  
Dreyfus Fund to procure a judgment in its favor, for his com-  
plaint against defendants, alleges upon information and belief  
(except as to paragraph 4), as follows:

1. Jurisdiction of this Court is based on the  
Investment Company Act of 1940, 15 U.S.C. Sections 80a-1 et seq.;  
the Investment Advisors Act of 1940, 15 U.S.C. Sections 80b-1  
et seq.; the Securities Exchange Act of 1934, 15 U.S.C. Sections 76a-  
et seq.; the rules and regulations of the Securities and Ex-  
change Commission; the principles of pendent jurisdiction and  
common law principles.



Amended Complaint

2. Many of the acts alleged herein occurred within the Southern District of New York.

3. This action is not a collusive one to confer on a Court of the United States jurisdiction which it would not have otherwise.

4. Plaintiff is and has been a shareholder of Dreyfus Fund since at least 1968.

5. Defendant Dreyfus Fund, a New York corporation with its principal office at 767 Fifth Avenue, New York, N. Y., is and has been at all times mentioned herein a management-type, diversified, open-end investment company. Dreyfus Fund is a necessary party to this action and consequently has been named as a nominal defendant herein.

6. Since 1969, and for a period of time prior thereto, defendant Dreyfus Corporation ("Dreyfus Corp.") acted as the investment adviser to Dreyfus Fund. Dreyfus Corp., a New York corporation, maintained its principal office at 767 Fifth Avenue, New York, N.Y.

7. Dreyfus Corp. acted as investment adviser pursuant to an agreement with Dreyfus Fund which provided that, in exchange for its services, Dreyfus Corp. would be paid an annual fee according to a formula set forth in the agreement. As investment adviser, Dreyfus Corp. obtained and evaluated economic, statistical and financial information to formulate and implement the investment programs of Dreyfus Fund. Dreyfus Corp., directly or through its subsidiaries, also placed orders

Amended Complaint

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for the purchase and sale of portfolio securities and it furnished the services of such executive and clerical personnel as may have been required to perform administrative functions. Dreyfus Corp. and its officers and directors dominated and controlled the business operations and affairs of Dreyfus Fund.

8. Defendant International Telephone and Telegraph Corp. ("I.T.T.") is a Delaware corporation with its principal office at 320 Park Avenue, New York, N.Y.

9. Defendant, Lazard Freres & Co. ("Lazard Freres") is a partnership engaged in the investment banking business with its principal office at 44 Wall Street, New York, New York. Since 1965, Lazard Freres & Co. has earned in excess of \$6,500,000 in fees and commissions for services performed for I.T.T.

10. Defendant, Marine Midland Banks, Inc. ("Marine Midland") is a Delaware corporation with its principal office at 241 Main Street, Buffalo, New York.

11. Defendant, Dreyfus Marine Midland Management Corp. ("Dreyfus-Marine"), a New York corporation, is a joint venture undertaken by Dreyfus Corp. with Marine Midland. Dreyfus-Marine provides, and since August 1970, has provided investment management and investment advisory services to pension funds, profit-sharing plans and endowment accounts.

Amended Complaint

Dreyfus-Marine is presently managing assets aggregating in excess of \$200,000,000 and maintains its office at 767 Fifth Avenue, New York, N.Y. At all times mentioned herein, Dreyfus Fund had no interest in and received no benefit from the operation of Dreyfus-Marine.

12. Defendant Howard Stein ("Stein") is and, at all relevant times herein, has been Chairman of the Board, President and an Investment Officer of Dreyfus Fund. He has also been Chairman of the Board of Dreyfus Corp. and Vice Chairman of Dreyfus-Marine. His address is 767 Fifth Avenue, New York, N. Y.

13. Defendant, Richard A.M.C. Johnson ("Johnson"), is and, at all relevant times herein, has been a Vice-President, Director and an Investment Officer of Dreyfus Fund. He has been also a Vice-President of Dreyfus Corp. and president and a Director of Dreyfus-Marine. His address is 767 Fifth Avenue, New York, N.Y.

14. Defendant Julian M. Smerling ("Smerling") is and at all times relevant herein has been a Vice-President (Financial) of Dreyfus Fund and a Vice-President of Dreyfus Corp. His address is 767 Fifth Avenue, New York, N.Y.

15. Defendant, Lawrence M. Greene ("Greene") is and, at all relevant times herein, has been Secretary, Treasurer and an Investment Officer of Dreyfus Fund. He has also been Vice-President, General Counsel and a Director of Dreyfus Corp. His address is 767 Fifth Avenue, New York, N. Y.

Amended Complaint

16. Under the terms of the investment advisory and management agreement between Dreyfus Fund and Dreyfus Corp., the latter manages the portfolio of investments of Dreyfus Fund subject to the approval of the Board of Directors of Dreyfus Fund. The said Board of Directors has authorized the Investment Officers of Dreyfus Fund to make investment decisions within the general investment policies of the said Board of Directors to be reported for Board approval at the next Board meeting. The said Investment Officers of Dreyfus Fund are the defendants Stein, Johnson and Greene, all of whom are officers and/or directors of Dreyfus Fund, Dreyfus Corporation and/or Dreyfus-Marine.

17. Defendant Felix G. Rohatyn ("Rohatyn") is a partner in Lazard Freres and is also a director of I.T.T. His address is 44 Wall Street, New York, N.Y.

18. Defendant Andre Meyer ("Meyer") is a partner in Lazard Freres and acted as the investment banker for I.T.T. in the acquisition of Hartford Fire Insurance Co. ("Hartford"). His address is 44 Wall Street, New York, N.Y.

19. From August 1970, and for a period prior thereto, both Marine Midland and Dreyfus Corp. had a direct interest in the success of Dreyfus-Marine and, during such period, Dreyfus Corp., its officers and directors, with actual and/or constructive knowledge, consent, cooperation and assistance of Marine Midland, I.T.T., Lazard Freres, Rohatyn and Meyer, engaged in seeking business opportunities for Dreyfus-Marine.

20. During the years 1969 to the date hereof, defendants Dreyfus Corp., Stein, Johnson, Smerling and Greene, for their personal profit and to promote the business success

Amended Complaint

of Dreyfus-Marine, with the actual and/or constructive knowledge, consent, cooperation and assistance of defendants Dreyfus-Marine, Marine Midland, I.T.T., Lazard Freres, Rohatyn and Meyer, by the use of the mails and other means and instrumentalities of interstate commerce, relying upon and utilizing the advantageous position of fiduciaries and investment advisers of Dreyfus Fund:

(a) engaged in acts and practices, involving personal misconduct, constituting a breach of the fiduciary duties which they owed to Dreyfus Fund;

(b) employed a device, scheme or artifice to defraud Dreyfus Fund;

(c) engaged in transactions, practices and a course of conduct which operated to defraud and deceive Dreyfus Fund;

(d) acted in concert with defendants Lazard Freres, Rohatyn and Meyer who, as brokers for a party or parties other than Dreyfus Fund, knowingly effected the sale of securities to Dreyfus Fund, without prior disclosure in writing to Dreyfus Fund, of the circumstances and capacity in which they were acting in concert with the said broker-defendants Lazard Freres, Rohatyn and Meyer and without obtaining the consent of Dreyfus Fund to such transaction or transactions; and

(e) engaged in acts, practices and a course of conduct which, as to Dreyfus Fund, was fraudulent, deceptive and manipulative.

Amended Complaint

21. A part of the said wrongs involved the utilization by Dreyfus Corp. of its position as investment manager and investment adviser of Dreyfus Fund, to obtain for Dreyfus-Marine the management of a pension fund controlled by I.T.T., under the following circumstances:

(a) In late 1969, I.T.T. was seeking to merge with Hartford and, so as to obtain a ruling from the Internal Revenue Service that such a merger would be a tax-free transaction for Hartford shareholders, I.T.T. agreed to dispose unconditionally of 1.7 million Hartford shares which it held;

(b) In November 1969, a sale by I.T.T. of the said 1.7 million shares was arranged through Lazard Freres to Mediobanca, a banking firm in Milan, Italy. The sale agreement provided that I.T.T. would bear the risk of any loss sustained by Mediobanca and further that Mediobanca would realize a profit on resale within a stated period of time;

(c) Defendants Rohatyn and Meyer had been involved in negotiations for I.T.T. to effect the merger with Hartford and were instrumental in arranging the sale to Mediobanca;

(d) Between November 1969 and late 1970, Mediobanca exchanged the aforementioned shares of Hartford for shares of I.T.T. and, again acting in concert with Lazard Freres, sold all or a portion of the latter shares to Dreyfus

Amended Complaint

Fund, thereby relieving I.T.T. of its aforementioned contractual obligations to Mediobanca;

(e) On or about July 17, 1971, terms under which the United States Government was willing to settle litigation it had instituted challenging the merger of I.T.T. and Hartford, were privately revealed to officials of I.T.T. and of Lazard Freres. These terms were revealed to the public on or about July 31, 1971;

(f) Between August 1970 and July 1971, defendants Dreyfus-Marine, Dreyfus Corp., Stein, Johnson, Smerling and Greene were engaged in seeking business opportunities for Dreyfus-Marine and among the business opportunities which they pursued was the management of pension funds controlled by I.T.T.;

(g) To promote this business opportunity for Dreyfus-Marine, Dreyfus Corp. and the defendants Stein, Johnson, Smerling and Greene caused Dreyfus Fund to make the purchase of shares referred to in paragraph 21(d), supra, and that purchase did induce I.T.T. to award to Dreyfus-Marine the management of pension funds aggregating approximately \$10,000,000.;

(h) Defendants Dreyfus-Marine, Marine Midland, I.T.T., Lazard Freres, Kohatyn and Meyer knew or should have known of the fiduciary relationship between Dreyfus Fund and the defendants Dreyfus Corp., Stein, Johnson, Smerling and Greene which prohibits self-dealing by them at the expense of and cost or loss to Dreyfus Fund.

## Amended Complaint

22. During the period from 1969 through 1971, Dreyfus Fund was in particularly grave need of the dedicated, competent and honest assistance of its officers and directors and of its investment manager and adviser. Total net assets of the Dreyfus Fund at the end of 1968 amounted to approximately \$2,666,400,000; by the end of 1969 they had declined to approximately \$2,398,200,000; by the end of 1970 they had further declined to approximately \$2,231,700,000. These losses were due in substantial part to the failure of defendants Dreyfus Corp., Stein, Johnson, Smerling and Greene to properly perform their fiduciary obligations to Dreyfus Fund and the defendants, other than Dreyfus Fund, are jointly and severally liable to Dreyfus Fund for the said losses.

23. Since I.T.T. and others, were willing to confer extra consideration upon those who controlled the purchasing power of Dreyfus Fund, there was a breach by defendants Dreyfus Corp., Stein, Johnson, Smerling and Greene of their duty to Dreyfus Fund by causing and permitting the value of such extra consideration realizable because of the said purchasing power of Dreyfus Fund to be diverted and channelled to Dreyfus-Marine for the enrichment of Dreyfus-Marine, Dreyfus Corp., Midland Marine and the individual defendants herein other than Rohatyn and Meyer. Defendants, other than Dreyfus Fund, are jointly and severally liable to Dreyfus Fund for the loss of the value of the aforesaid extra consideration.

24. Defendants' conduct deprived Dreyfus Fund, to its loss and damage, of the guidance, uninfluenced by motives



Amended Complaint

of personal gain, of Dreyfus Corp. and of the defendants Stein, Johnson, Smerling and Greene to which Dreyfus Fund was entitled. Defendants, other than Dreyfus Fund, are jointly and severally liable to Dreyfus Fund for the loss and damage thereby sustained.

25. The defendants, other than Dreyfus Fund, participated, pursuant to a common plan and understanding among them, in bringing about the diversion and channeling of profits, earnings and assets from Dreyfus Fund to Dreyfus-Marine, thereby depriving Dreyfus Fund of the opportunity to earn profits the value of which Dreyfus-Marine has gained and will gain through the management of assets which have grown in volume since August 1970 and which now aggregate in excess of \$200,000,000. They are jointly and severally liable to Dreyfus Fund for the resulting profits which have been gained as a result of such diversion and channeling of profits, earnings and assets, and for the damages which have been sustained by Dreyfus Fund.

26. The defendants Dreyfus-Marine, Dreyfus Corp., Marine Midland, Stein, Johnson, Smerling and Greene benefited from the diversion and channeling of profits, earnings and assets from Dreyfus Fund and are jointly and severally liable to Dreyfus Fund for their resulting gains and profits and for the damages sustained by Dreyfus Fund.

27. The defendants, Dreyfus Corp., Stein, Johnson, Smerling and Greene by reason of their misuse of their

## Amended Complaint

positions of trust as fiduciaries of Dreyfus Fund, and the breach of their duties and obligations to Dreyfus Fund, are jointly and severally liable to Dreyfus Fund for the return of all charges, fees, salaries, commissions, and other compensation or consideration paid by Dreyfus Fund, to each and every one of them and to any entity controlled or owned in whole or in part by any of them, during the years 1969, 1970 and 1971.

28. By reason of the premises and by reason of the failure of the defendants, other than Dreyfus Fund, to disclose the self-dealing of Dreyfus Corp. and its officers and directors at the expense of Dreyfus Fund, the annual approval by Dreyfus Fund shareholders of the management and/or investment advisory agreements with Dreyfus Corp. and/or its subsidiaries, officers, directors, agents and/or employees for the years 1969 through 1971 was induced and obtained by fraud and was void and of no effect and the said agreements have lapsed. Defendants, other than Dreyfus Fund, are jointly and severally liable for all funds expended by Dreyfus Fund as a consequence of the said agreements, to Dreyfus Corp. or any of its subsidiaries, officers, directors, agents or employees.

29. The defendants, I.T.T., Midland Marine, Dreyfus-Marine, Lazard Freres, Rohatyn and Meyer, by reason of their participation in and encouragement of the breach of fiduciary duties owed to Dreyfus Fund by the other defendants named herein, other than Dreyfus Fund, are jointly and severally liable to Dreyfus Fund for all profits they derived from transactions with Dreyfus Fund during the years 1969

Amended Complaint

through 1971.

30. Demand upon the Board of Directors of Dreyfus Fund to bring this action would be futile because:

(a) at the present time the majority of the said Board of Directors were directors of the Dreyfus Fund at the time of the transactions complained of herein, participated therein with knowledge or notice of their illegality and are subject to liability therefor;

(b) several directors of Dreyfus Fund are officers and/or directors of Dreyfus Corp. and/or Dreyfus-Marine and are subject to the domination and control of the said corporations and of individual defendants named herein;

(c) the directors of Dreyfus Fund are not free of interests adverse to the bringing of this action and the institution of this action by the directors of Dreyfus Fund would place it in hostile hands and would prevent its effective prosecution.

31. Demand upon the shareholders of Dreyfus Fund to bring this action would be futile and is unnecessary because:

(a) the wrongs alleged herein violated the law and are incapable of stockholder ratification;

(b) as a matter of law the management of Dreyfus Fund and of its affairs, including the bringing of lawsuits, is entrusted to its directors and not to its shareholders and the shareholders cannot by resolution or otherwise

Amended Complaint

require Dreyfus Fund and its directors to effectively prosecute an action;

(c) Dreyfus Fund has many thousand shareholders scattered all over the United States and in foreign countries. Their identity is subject to frequent changes. To secure action from shareholders would require a proxy fight with management, which controls the proxy material of Dreyfus Fund and uses Dreyfus Fund's monies in preparing and mailing proxy material and soliciting shareholders' votes. The conduct of a proxy fight by plaintiff would entail prohibitive expenses and would cause undue loss of time, so that the claims alleged might become barred by the statute of limitations or laches.

WHEREFORE, judgment is prayed for:

(a) requiring defendants, other than Dreyfus Fund, to account for and jointly and severally to pay to Dreyfus Fund and its shareholder the profits gained by defendants and the losses sustained by Dreyfus Fund by reason of the wrongs alleged herein;

(b) rescinding the investment advisory and management agreements of Dreyfus Fund with Dreyfus Corp. and its subsidiaries and requiring each of the defendants, other than Dreyfus Fund, to return to Dreyfus Fund all fees, commissions, salaries or other compensation or consideration received by him or it or by any subsidiary of Dreyfus Corp. from Dreyfus Fund by virtue of the said agreements or otherwise during the years 1969, 1970 and 1971;

(c) impressing a constructive trust for

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Amended Complaint

the benefit of Dreyfus Fund and its stockholders as to all profits and gains received by Dreyfus-Marine by reason of the wrongs complained of herein including the wrongful utilization by Dreyfus Corp. and its officers and directors of the positions they held as investment managers and advisors for Dreyfus Fund;

(d) impressing a constructive trust for the benefit of Dreyfus Fund and its stockholders as to all interest of each and every defendant herein in Dreyfus-Marine by reason of the fact that said Dreyfus-Marine acquired its value through the wrongful use by certain of the defendants herein of their positions of trust as fiduciaries of Dreyfus Fund;

(e) impressing a constructive trust for the benefit of Dreyfus Fund upon all profits and gains realized by the defendants I.T.T., Lazard Freres, Rohatyn and Meyer in any transaction wherein they participated in a breach of fiduciary duty owed by other defendants herein to Dreyfus Fund;

(f) allowing plaintiff the costs and expenses of this action including reasonable counsel fees; and

(g) granting such other and further relief as may be just.

KAPLAN, KILSHEIMER & FOLEY

by: 

A Member of the Firm

Attorneys for Plaintiff Leon Segan  
Office and P. O. Address  
122 East 42nd Street  
New York, New York 10017  
(212) MU 7-1980

Amended Complaint

V E R I F I C A T I O N

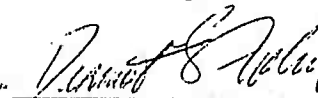
STATE OF NEW YORK )

COUNTY OF NEW YORK )

DERMOT G. FOLEY, being duly sworn, deposes and says:

That he is admitted to practice in this Court and the courts of New York State, and is a member of the firm of Kaplan, Kilsheimer & Foley, the attorneys of record for Leon Segan, plaintiff in the within action; that deponent has read the foregoing Complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true. Deponent further says that the reason this verification is made by deponent and not by the aforesaid plaintiff is that the aforesaid plaintiff resides outside of the county in which deponent has his office.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows: documents and records and conversations with the aforesaid plaintiff and others.

  
Dermot G. Foley

Sworn to before me this  
19th day of October, 1972.

LEO KAPLAN  
Notary Public, State of New York  
No. 93-7158503  
Qualified in Bronx County  
Certificate filed in New York County  
Commission Expires March 30, 1974

DEFENDANT'S NOTICE OF MOTION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
LEON SEGAN,

Plaintiff,

: 72 Civ. 1551 J.M.C.

-against-

: NOTICE OF MOTION

DREYFUS CORPORATION, et al.,

Defendants.

:  
----- x

S I R S :

PLEASE TAKE NOTICE that upon the complaint herein and the annexed affidavit of Lawrence M. Greene, sworn to the 14th day of November, 1972, the undersigned defendants will move this Court on the 18th day of December, 1972, in Room 1001 , United States Courthouse, Foley Square, New York, New York, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard, for an order:

(a) pursuant to Rules 12(b)(6) of the Federal Rules of Civil Procedure, dismissing the complaint herein; or, in the alternative,

(b) pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, directing the filing of a more definite statement,

by reason of the failure of the plaintiff to comply with the provisions of Rule 9(b) of the Federal Rules of Civil Procedure; and for such other and further relief as to the Court may seem just and proper.

\* All Defendants other than Dreyfus Fund joined in this cross-motion.

Defendant's Notice of Motion

PLEASE TAKE NOTICE that pursuant to Rule 9(c)(2) of the General Rules of this Court, all papers in opposition to this motion must be served at least 3 days prior to the return date hereof.

Dated: New York, New York

November 15, 1972

Yours, etc.

ROYALL, KOEGEL & WELLS  
Attorneys for Defendants  
Dreyfus Corporation, Howard  
Stein, Richard A.M.C. Johnson,  
Julian M. Smerling and Lawrence  
M. Greene  
200 Park Avenue  
New York, New York 10017

TO:

KAPLAN, KILSHEIMER & FOLEY  
Attorneys for Plaintiff  
122 East 42nd Street  
New York, New York 10017

WORMSER, KIELY, ALESSANDRONI  
MANONEY & MCCANN  
Attorneys for Defendant I.T.T. Corp.  
100 Park Avenue  
New York, New York 10017

PAUL, WEISS, RIFKIND, WHARTON  
& GARRISON  
Attorneys for Defendants Lazard Freres  
& Co., Felix G. Rohatyn, Andre Meyer  
345 Park Avenue  
New York, New York 10022

SULLIVAN & CROMWELL  
Attorneys for Marine Midland Banks  
48 Wall Street  
New York, New York 10005

COUDERT BROS.  
Attorneys for Dreyfus Marine Midland  
Management Corp.  
200 Park Avenue  
New York, New York 10017

STROOCK & STROOCK & LAVAN  
Attorneys for The Dreyfus Fund, Inc.  
61 Broadway  
New York, New York 10006



AFFIDAVIT OF LAWRENCE M. GREENE  
(NOVEMBER 14, 1972)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
LEON SEGAN, :  
 :  
Plaintiff, :  
 :  
-against- : 72 Civ. 1551 J.M.C.  
DREYFUS CORPORATION, et al., : AFFIDAVIT  
 :  
Defendants. :  
----- x

STATE OF NEW YORK )  
 : ss.:  
COUNTY OF NEW YORK )

LAWRENCE M. GREENE, being duly sworn, deposes and  
says:

1. I am an attorney duly admitted to practice  
before the Courts of this State and a member of the Bar of  
this Court. I am General Counsel, an officer and director  
of defendant the Dreyfus Corporation ("Dreyfus"), and an  
officer of defendant The Dreyfus Fund, Inc. ("Dreyfus Fund").  
I am one of the defendants in this action.

2. This affidavit is submitted in support of  
defendants' motion attacking the amended complaint (herein-  
after sometimes "complaint") for failure of the plaintiff  
to comply with Rule 9(b) of the Federal Rules of Civil  
Procedure.

3. This is a stockholder derivative action in  
which the most sweeping and general conclusory allegations  
of fraud are directed against Dreyfus and various of its  
officers and directors, including myself. Thus, we are

Affidavit of Lawrence M. Greene  
(November 14, 1972)

charged with employing a "device, scheme or artifice to defraud Dreyfus Fund" (Complaint, Para. 20(b)); engaging in "transactions, practices and a course of conduct which operated to defraud and deceive Dreyfus Fund" (ibid., Para. 20(c)); and engaging in "acts, practices and a course of conduct which, as to Dreyfus Fund, was fraudulent, deceptive and manipulative" (ibid., Para. 20(c)). It is further alleged that such fraudulent conduct was for my own "personal profit" and that of the other moving defendants, and "to promote the business success" of defendant Dreyfus Marine Midland Management Corp. ("Dreyfus-Marine") (ibid., Para. 20), a company in which Dreyfus is alleged to have had an interest (ibid., Paras. 11, 19).

4. Though long on invective, the complaint is singularly short of factual allegations to support its conclusory allegations. Indeed, only one specific instance of alleged wrongdoing is referred to. This reference is contained in Paragraph 21 of the complaint and alleges that "a part of" the wrongdoing complained of involved the wrongful utilization by Dreyfus of its position as manager and investment advisor of the Dreyfus Fund to obtain for Dreyfus-Marine a portion of the management of a pension fund controlled by ITT.

5. Rule 9(b) of the Federal Rules of Civil Procedure provides that "in all averments of fraud ... the circumstances constituting fraud ... shall be stated with particularity". The complaint contains no allegations which even arguably comply with the requirement of Rule 9(b). There are nothing but bald-faced, conclusory charges of fraud,

Affidavit of Lawrence M. Greene  
(November 14, 1972)

alleged not on personal knowledge but merely "upon information and belief," without any particularization of the facts, or (except for the alleged ITT transaction referred to in Paragraph 21 of the complaint) even identification of the transactions allegedly involved.

6. As the Court is well aware, any allegation of fraud is a serious matter, involving, as it does, charges of moral turpitude. When directed against professional fiduciaries, it casts a cloud which, until removed, can cause incalculable harm, particularly where the fraud is alleged to have occurred in the course of, and in connection with, the fiduciaries' professional duties. This is particularly so in the instant case because this lawsuit and the allegations charged in the complaint must be described in all current prospectuses of the mutual funds managed and sold by Dreyfus, in the public reports filed with the Securities & Exchange Commission by Dreyfus, in its annual report to stockholders, and in proxy statements for the funds and for Dreyfus.

7. As a matter of elementary fairness, we are entitled to know what frauds we are accused of having perpetrated. Indeed, the Dreyfus Fund, its stockholders, the stockholders of Dreyfus, and the public at large, are also entitled to such information. If plaintiff intends to charge defendants with fraud, the facts and circumstances surrounding the fraud and the facts and circumstances which leads plaintiff to believe that such fraud has been perpetrated, should be specified with particularity. If not, these baseless charges should be withdrawn, and the complaint dismissed.

8. The relief here requested is particularly

Affidavit of Lawrence M. Greene  
(November 14, 1972)

apposite in the light of the position taken by plaintiff at his deposition noticed by Lazard Freres with respect to the analogous, unspecified charges of wrongdoing directed toward that defendant. I am advised, in this connection, that although plaintiff testified that his attorney had conducted an investigation which revealed acts of misconduct other than those attempted to be alleged in Paragraph 21, he adamantly refused to disclose the acts of misconduct complained of, asserting both the attorney-client and work-product privileges in support of such refusal. (Tr. 8, 11, 14, 16-19, 32, 33, 40-54). Plaintiff, who is himself a lawyer, apparently believes that not only need he not particularize the allegations of fraud contained in his complaint, but also that he can withhold from defendants all knowledge of the claims of unspecified wrongdoing sought to be asserted until the time of trial.

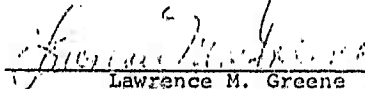
9. It is equally significant that the amended complaint in this action was filed some months after the decision of the Court of Appeals for this circuit in Segal v. Gordon and Coburn Corp. of America, \_\_\_\_ F.2d \_\_\_\_, CCH Fed. Sec. L. Rep. Para. 93,590 (1972) (not yet officially reported). I am advised that prior to the filing of the amended complaint, the decision in Segal was called to the specific attention of plaintiff's counsel and that he was even supplied with a copy of the court's opinion.

10. If, in fact, plaintiff has any knowledge of wrongdoing by the defendants, it should be a simple matter for him to allege the facts in such a manner as to comply with

Affidavit of Lawrence M. Greene  
(November 14, 1972)

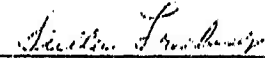
Rule 9(b). Elementary conceptions of fairness to the defendants and the specific language of Rule 9(b) require no less. If, on the other hand, plaintiff in fact asserts no claim other than that relating to ITT, this, too, should be made clear, so that defendants need no longer wrestle with the vague and formless charges of fraud which have been directed against them.

11. For each of the reasons assigned, I respectfully submit that defendants' motion should be granted.

  
Lawrence M. Greene

Sworn to before me this

14<sup>th</sup> day of November, 1972

  
Notary Public  
STELLA FREEDBERG, Notary Public  
State of New York, No. 03-1309500  
Qualified in Bronx County  
Cert. Filed in New York County  
Commission Expires March 30, 1975

AFFIDAVIT OF DERMOT G. FOLEY  
(December 14, 1972)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

LEON SEGAN,

72 civil 1551 (JMC)

Plaintiff,

-against-

AFFIDAVIT

DREYFUS CORPORATION, et al,

Defendants.

-----x

STATE OF NEW YORK            )  
                              : ss.:  
COUNTY OF NEW YORK         )

DERMOT G. FOLEY, being duly sworn, deposes and  
says:

1. I am a member of KAPLAN, KILSHEIMER & FOLEY,  
attorneys for the plaintiff herein. I have been in charge  
of this action for our firm and am familiar with the pro-  
ceedings had herein. This affidavit is submitted in oppo-  
sition to a motion made by various defendants which seeks  
dismissal of the Amended Complaint herein or, alternatively,  
an order requiring the filing of a more definite statement  
by reason of the alleged failure of the plaintiff to include  
allegations in the Amended Complaint which are required under  
Rule 9(b) of the Federal Rules of Civil Procedure ("F.R.C.P.").

Affidavit of Dermot G. Foley  
(December 14, 1972)

2. This is a 'stockholders' derivative action which alleges a course of conduct wherein the defendants, other than DREYFUS FUND, acting together, at the expense and to the detriment of DREYFUS FUND, improperly used the fiduciary relationship of some of the defendants herein to DREYFUS FUND for the purpose of promoting the personal profit and business success of themselves and other entities in which they had an interest. A copy of the Amended Complaint is attached hereto as Exhibit "A". The original Complaint was substantially identical with the Amended Complaint; the amendment was made to accomplish minor corrections not relevant to this motion.

3. The original Notice of Motion herein was accompanied by an Affidavit of LAWRENCE M. GREENE sworn to November 14, 1972 (hereinafter the "GREENE AFFIDAVIT"). The GREENE AFFIDAVIT, in complaining about the Amended Complaint herein, specifically points to allegations of fraud in Paragraph "20" of the said Amended Complaint which, it is claimed, are not supported by factual allegations as required by Rule 9(b) F.R.C.P. (See GREENE AFFIDAVIT Paragraphs "3" and "4"). The balance of the GREENE AFFIDAVIT consists of argument favoring a requirement of extremely broad and detailed particularization of probative facts in the complaint. It is most significant, however, that there is no claim or pretense in the GREENE AFFIDAVIT, that defendants are unable to prepare an Answer to the Amended Complaint because of a lack of factual allegations.

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4. At the outset I wish to inform the Court that I agree with the GREENE AFFIDAVIT to the extent that it isolates the allegations of fraud in Paragraph "20" of the Amended Complaint as those to which the provisions of Rule 9(b) F.R.C.P. apply. I disagree with the claim that as to those allegations there has been a failure in the Amended Complaint to meet the requirements of the said Rule.

5. Rule 9(b) F.R.C.P., as it has been interpreted and enforced, recognizes three (3) essential types of allegations. The first such category consists of conclusory charges such as those which are included in Paragraph "20" of the Amended Complaint. Rule 9(b) F.R.C.P. applies to allegations of this nature. A second category is allegations of ultimate fact which give sufficient factual information supporting the said conclusory charges so that a defendant can understand and answer a complaint. Finally, there is a category of highly particularized, evidentiary factual allegations which in general are frowned upon in a complaint and which may violate Rule 8 F.R.C.P.

6. I submit that resolution of the present motion will depend upon a determination as to whether or not the factual allegations in Paragraph "20" of the Amended Complaint are supported by pleading elsewhere in the Amended Complaint.



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7. Furthermore, inasmuch as the moving parties indicate in Paragraph "4" of the GREENE AFFIDAVIT that they have no objection to the factual allegations in Paragraph "21" of the Amended Complaint it would appear that this motion, realistically, is not intended to seek outright dismissal but, rather, is addressed only to those portions of the Amended Complaint other than the specific episode which is detailed in Paragraph "21" thereof.

THE COMPLAINT

A.) Conclusory Charges of Fraud

8. The conclusions of fraud in Paragraph "20" of the Amended Complaint charge that between the years 1969 and 1972 the defendants DREYFUS CORPORATION, HOWARD STEIN, RICHARD A.M.C. JOHNSON, JULIAN M. SMERLING and LAWRENCE M. GREENE, for their personal benefit and to promote DREYFUS MARINE MIDLAND MANAGEMENT CORP. (hereinafter "DREYFUS MARINE"), which is jointly owned by DREYFUS CORPORATION and MARINE MIDLAND BANKS INC., acting in concert with the other defendants (except DREYFUS FUND):

- a) Violated the fiduciary duties owed by them to DREYFUS FUND;
- b) Employed a device, scheme or artifice to defraud DREYFUS FUND;
- c) Engaged in transactions, practices and a

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course of conduct which operated to  
defraud and deceive DREYFUS FUND;

- d) Acted in concert with other defendants  
in the sale of securities to DREYFUS  
FUND without prior disclosure to DREYFUS  
FUND and without obtaining the consent  
of DREYFUS FUND; and
- e) Engaged in acts, practices in a course  
of business which, as to DREYFUS FUND,  
was fraudulent, deceptive and manipulative.

9. As indicated above, I agree with the GREENE  
AFFIDAVIT to the extent that it is claimed in the said  
Affidavit that these conclusory allegations are the type  
that are subject to the requirements of Rule 9(b) F.R.C.P.

B.) Ultimate Facts Pleaded in Support  
of Conclusory Charges of Fraud

10. The Amended Complaint specifies that the fore-  
going fraudulent activities consisted of conduct whereby:

- a) Profits, earnings and assets were diverted  
and channeled from DREYFUS FUND to promote  
the business activity of DREYFUS MARINE  
and obtain opportunities for DREYFUS  
MARINE which as a result, obtained con-  
tracts for the management by DREYFUS MARINE

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of funds and assets aggregating in  
excess of TWO HUNDRED MILLION  
(\$200,000,000.00) DOLLARS. (Amended  
Complaint, Paragraphs "25" and "26").

- b) Extra consideration was realized  
from transactions of DREYFUS FUND, the  
value of which extra consideration should  
have been received by DREYFUS FUND but  
which instead was diverted to DREYFUS  
MARINE. (Amended Complaint, Paragraph  
"23").
- c) DREYFUS FUND was deprived of the guidance,  
uninfluenced by motives of personal gain,  
of DREYFUS CORPORATION and the defendants  
STEIN, JOHNSON, SMERLING and GREENE which  
contributed substantially to a decrease  
of FOUR HUNDRED THIRTY-FOUR MILLION,  
SEVEN HUNDRED THOUSAND (\$434,700,000.00)  
DOLLARS in the net asset value of DREYFUS  
FUND between 1969 and 1971. (Amended  
Complaint, Paragraph "22" and "24").
- d) There was a failure to disclose to  
DREYFUS FUND shareholders, the fiduciary  
violations committed by DREYFUS CORPORA-  
TION and its officers, when management  
and advisory contracts were renewed and/or

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extended in the years 1969, 1970 and 1971 which failure made the proxy materials issued for the purpose of obtaining an affirmative vote on the question of each of the said renewals and extensions, misleading and deceptive and which, consequently, entitled DREYFUS CORPORATION to the return of the fees, commissions and other consideration paid pursuant to the said contracts. (Amended Complaint, Paragraphs "27" and "28").

C. Evidentiary Facts Pleaded in the Complaint to Illustrate the pleaded Ultimate Facts

11. The allegations in Paragraph "21" of the Amended Complaint described in minute factual detail a typical example of the methods employed by the defendants during the course of conduct which is the subject of this action. It is alleged therein, in substance, that:

- a) In seeking a ruling from the INTERNAL REVENUE SERVICE ("IRS") that its proposed merger with HARTFORD FIRE INSURANCE COMPANY ("HARTFORD") would be a tax free event for HARTFORD shareholders, defendant INTERNATIONAL TELEPHONE AND TELEGRAPH CORP. ("ITT") undertook to dispose unconditionally of its 1.7 million HARTFORD shares

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prior to such merger;

- b) A sale, purporting to accomplish this, was arranged by defendant LAZARD FRERES AND CO. ("LAZARD") for defendant ITT to a Milan bank ("MEDIOBANCA");
- c) In fact the said disposition was not unconditional but, on the contrary, it included indemnity against loss by and a guarantee of profit for MEDIOBANCA in the event of a resale within specified periods of time;
- d) Thereafter such a resale was arranged, again by LAZARD, from MEDIOBANCA to DREYFUS FUND on terms which relieved defendant ITT of its said indemnity agreement and profit guarantee and thereby removed the said conditions which had attached to the original disposition of the HARTFORD shares by defendant ITT;
- e) DREYFUS FUND was caused to make this purchase from MEDIOBANCA, on terms which thus suited the needs of defendant ITT, by its manager DREYFUS CORPORATION and by defendant officers and affiliates of DREYFUS CORPORATION who were acting in concert with other defendants herein.

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- f. In return for having caused DREYFUS FUND to make the said purchase, DREYFUS CORPORATION received a reward or special consideration from defendant ITT in the form of the awarding of the management of ITT pension funds aggregating approximately TEN MILLION (\$10,000,000.00) DOLLARS to DREYFUS CORPORATION'S subsidiary DREYFUS MARINE. DREYFUS FUND, whose buying power was the vehicle by which this reward or special consideration was obtained by its manager's subsidiary, had no interest in the said subsidiary and received no part of the said reward or special consideration.

12. This single episode is related in the Amended Complaint in a far more detailed manner than is normally proper in light of Rule 8 F.R.C.P. This was done to furnish an illustration of the flagrant misconduct practiced by the defendants other than DREYFUS FUND, at the expense of DREYFUS FUND. It is one graphic example of the pattern of impropriety which is the factual subject matter of this action. It would not have been possible to describe this illustrative episode in a complaint strictly limited to allegations of ultimate fact. Indeed, as is shown in the Memorandum of Law submitted herewith in opposition to the present motion, the allegations of Paragraph "21" of the Amended Complaint go considerably beyond the pleading of ultimate facts which is required under

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Rule 9(b) F.R.C.P.

D.) Factual Allegations in the Amended  
Complaint which Constitute a Basis  
of Information and Belief in the  
Truth of the Conclusory Allega-  
tions of Fraud.

13. As indicated above the Amended Complaint does contain allegations of ultimate fact in support of the conclusory charges of fraud which satisfy the requirements of Rule 9(b) F.R.C.P. However, it will be noted that much of the complaint is alleged upon information and belief. This is frequently the case in actions which involve facts largely or exclusively under the control of the defendants. In such case, and this is clearly one, it has been held that the allegations in the complaint should at least demonstrate a basis for the belief in the conclusory allegations of fraud. Such a requirement is also met in the Amended Complaint.

14. This requirement is expressly satisfied in the Verification of the Amended Complaint wherein I have sworn that the ground for belief as to all matters pleaded on information and belief is "documents and records and conversations with the aforesaid plaintiff and others."

15. In addition, the allegations of ultimate fact and of evidentiary fact in the Amended Complaint constitute a basis for such belief.

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16. DREYFUS CORPORATION at all relevant times acted as investment advisor to DREYFUS FUND (Amended Complaint, Paragraph 7) and as such obtained and evaluated data to formulate and implement the investment programs of DREYFUS FUND, placed orders for the purchase and sale of portfolio securities for DREYFUS FUND and, through its officers and directors, it controlled and dominated DREYFUS FUND (Amended Complaint, Paragraph 8). The said officers included:

- a) Defendant HOWARD STEIN who was Chairman of the Board of DREYFUS CORPORATION, Vice-Chairman of DREYFUS MARINE and also the Chairman, President and an Investment Officer of DREYFUS FUND (Amended Complaint, Paragraph "12");
- b) Defendant RICHARD A. M. C. JOHNSON who was a Vice-President of DREYFUS CORPORATION, the President and a Director of DREYFUS MARINE and also a Vice-President, Director and Investment Officer of DREYFUS FUND (Amended Complaint, Paragraph "13");
- c) Defendant JULIAN M. SMERLING who was a Vice-President of DREYFUS CORPORATION and also a Vice-President (Financial) of DREYFUS FUND (Amended Complaint, Paragraph "14"); and



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d) Defendant LAWRENCE M. GREENE who was  
a Vice-President, the General Counsel  
and a Director of DREYFUS CORPORATION  
and also the Secretary, the Treasurer  
and an Investment Officer of DREYFUS  
FUND (Amended Complaint, Paragraph "15").

17. This pattern of wearing multiple hats became  
a condition of gross conflict because, as alleged in the  
Amended Complaint, it presented the means for accomplishing  
the frauds alleged in Paragraph "20" of the Amended Complaint.

18. Paragraph "21" of the Amended Complaint, a  
classic example of the fiduciary hand-in-the-till, justifies  
the belief, because of its complexity and deviousness, and  
because of its total incompatibility with the standards of  
selfless and faithful service expected of a fiduciary, that  
it was not an isolated event. When coupled with the above  
mentioned conflicts of interest and the allegations of ul-  
timate fact summarized in Paragraph "10", supra, it becomes  
apparent that a concerted effort was underway throughout the  
relevant period to build DREYFUS MARINE, a new, untried and  
untested entity, into a substantial business enterprise.

19. It is common knowledge that this occurred at  
a time of generalized depression in the securities industry  
when all service entities were under heavy pressure. The ac-  
quisition, in such a short period of time, of advisory and/or

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management contracts for assets aggregating over TWO HUNDRED MILLION (\$200,000,000.00) DOLLARS demonstrates the determined and intensive program which was brought to bear in the search for business opportunities.

20. DREYFUS FUND, during this period drifted downward from a position where it had been regarded as a superior performer in comparison with other funds to a position of poor and mediocre performance. It is reasonable to believe that if the management had devoted themselves selflessly and faithfully to the problems which DREYFUS FUND faced during those years instead of the building of their own personal empire as alleged in the Amended Complaint the preeminent position which DREYFUS FUND had maintained in the past would have endured.

THE WORK-PRODUCT PROBLEM

21. There is another basis for belief in the fraudulent allegations of the Amended Complaint which is well-known to the defendants herein. Paragraph "8" of the GREENE AFFIDAVIT makes reference to a difference of opinion that occurred during a deposition of the plaintiff. The reference therein to information which we declined to disclose on the grounds that it was privileged work product deserves elaboration.

22. The facts are that the plaintiff observed some newspaper accounts which led him to suspect that he

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and other shareholders of DREYFUS FUND had been mistreated. The plaintiff, a friend of mine of long standing who was aware that I have engaged in stockholder litigation in the past, spoke with me on the matter. At his request I personally conducted an investigation in the course of which I satisfied myself that the DREYFUS FUND shareholders had been defrauded in the manner described in the Amended Complaint herein.

23. The defendants' attorneys have apparently come to suspect that I was aided in my investigation by persons close to the defendants. The difference of opinion which occurred in the course of the above mentioned deposition involved itself essentially with the attempts of the defendants to explore my work-product and presumably to ascertain the identity of any persons close to the defendants who may have given information detrimental to the defendants.

24. I am particularly anxious to avoid revelation of any confidential sources of information and the details of my work-product. But I can assure this Court that what I discovered in the course of my investigation satisfied me that the facts and conclusions pleaded in the Amended Complaint were true. Furthermore, so that the defendants will be provided with the information upon which I intend to rely in proving my case, I have served upon them a detailed set of interrogatories, the answers to which will reveal to them the supporting information upon which I intend to rely. Consequently there is no necessity to reveal work-product.

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25. It should be obvious that Rule 9(b) F.R.C.P. was never intended to be a discovery device. It is merely intended to insure that the complaint is sufficiently clear to be answered by the defendants.

26. The Amended Complaint herein satisfies that requirement by amplifying the conclusory allegations of fraud with pleadings of ultimate fact and further by pleading which demonstrates the basis for belief in the conclusory charges of fraud which are made on information and belief. To go further and use Rule 9(b) F.R.C.P. to require an amendment of a complaint which may open the door to discovery of facts which would otherwise be privileged is highly improper and should be rejected by the Court.

THE SEGAL CASE

27. In Paragraph "9" of the GREENE AFFIDAVIT reference is made to the decision of the Court of Appeals in Segal v. Gordon and Coburn Corp. of America (2nd Cir., 1972). I submit that the language and reasoning of that decision should be read in the context of the complaint to which it was addressed. A copy of the said complaint, running one and one-half (1 1/2) pages in length, is attached hereto as Exhibit "B".

28. A comparison of Segal complaint (Exhibit "B") with the Amended Complaint herein (Exhibit "A") demonstrates that the Segal decision is inapposite in the present situation.

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Plainly the Segal complaint was limited to unsupported conclusory charges of fraud. It is equally clear that the charges of fraud in Paragraph "20" of the Amended Complaint herein are amply supported by allegations not only of ultimate facts supporting the said charges, but by additional allegations of evidentiary fact which exceed the requirements of Rule 9(b) F.R.C.P. Furthermore, the basis for the belief in the conclusory charges of fraud in the Amended Complaint is not only expressly stated in the verification thereof, but is further justified by extensive factual allegations.

C O N C L U S I O N

29. The present motion is basically defective because it is founded upon a fundamental misconception of the pleading requirements of Rule 9(b) F.R.C.P. By isolating the evidentiary fact allegations of Paragraph "21" of the Amended Complaint from the focus of the present attack, the GREENE AFFIDAVIT argues that factual allegations as detailed and probative as those contained in Paragraph "21" are required by the Rule to support each and every aspect of the fraudulent course of conduct which is the subject of the action.

30. Such an interpretation of the Rule would mandate detailed evidentiary particularization not only of the conclusory charges of fraud in a complaint but also of the pleadings of ultimate fact therein which support such

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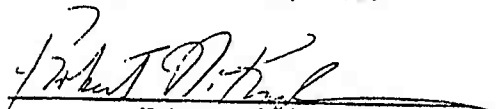
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charges. This is not merely impossible in most cases but  
it is also forbidden under Rule 8 F.R.C.P.

WHEREFORE, it is respectfully requested that the  
motion be denied in all respects.

  
DERMOT G. FOLEY

Sworn to before me this  
14th day of December, 1972.

  
Notary Public

ROBERT H. KARLAN  
Notary Public, State of New York  
No. 123456789  
City of New York

Affidavit of Dermot G. Foley  
(December 14, 1972)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
LEON SEGAN,

Plaintiff,

-against-

DREYFUS CORPORATION, MARINE MIDLAND BANKS, INC.,  
DREYFUS MARINE MIDLAND MANAGEMENT CORP., INTER-  
NATIONAL TELEPHONE AND TELEGRAPH CORP., LAZARD  
FRERES & CO., HOWARD STEIN, RICHARD A.M.C.  
JOHNSON, JULIAN M. SMERLING, LAWRENCE M. GREENE,  
FELIX G. ROHATYN, ANDRE MEYER, AND THE  
DREYFUS FUND, INC.,

Defendants.

AMENDED  
COMPLAINT -  
DERIVATIVE ACTION  
PLAINTIFF'S DEMAND FOR  
TRIAL BY JURY

72 Civ. 1991

----- X  
Plaintiff, by his attorneys, KAPLAN, KILSEIMER  
& FOLEY, in his own behalf and as a shareholder of Dreyfus Fund,  
Inc., ("Dreyfus Fund"), on behalf of himself and all other share-  
holders of Dreyfus Fund similarly situated and in the right of  
Dreyfus Fund to procure a judgment in its favor, for his com-  
plaint against defendants, alleges upon information and belief  
(except as to paragraph 4), as follows:

1. Jurisdiction of this Court is based on the  
Investment Company Act of 1940, 15 U.S.C. Sections 80a-1 et seq.;  
the Investment Advisors Act of 1940, 15 U.S.C. Sections 80b-1  
et seq.; the Securities Exchange Act of 1934, 15 U.S.C. Sections 78a-1  
et seq.; the rules and regulations of the Securities and Ex-  
change Commission; the principles of pendent jurisdiction and  
common law principles.

*Exhibit "A"*

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2. Many of the acts alleged herein occurred within the Southern District of New York.

3. This action is not a collusive one to confer on a Court of the United States jurisdiction which it would not have otherwise.

4. Plaintiff is and has been a shareholder of Dreyfus Fund since at least 1968.

5. Defendant Dreyfus Fund, a New York corporation with its principal office at 767 Fifth Avenue, New York, N. Y., is and has been at all times mentioned herein a management-type, diversified, open-end investment company. Dreyfus Fund is a necessary party to this action and consequently has been named as a nominal defendant herein.

6. Since 1969, and for a period of time prior thereto, defendant Dreyfus Corporation ("Dreyfus Corp.") acted as the investment adviser to Dreyfus Fund. Dreyfus Corp., a New York corporation, maintained its principal office at 767 Fifth Avenue, New York, N.Y.

7. Dreyfus Corp. acted as investment adviser pursuant to an agreement with Dreyfus Fund which provided that, in exchange for its services, Dreyfus Corp. would be paid an annual fee according to a formula set forth in the agreement. As investment adviser, Dreyfus Corp. obtained and evaluated economic, statistical and financial information to formulate and implement the investment programs of Dreyfus Fund. Dreyfus Corp., directly or through its subsidiaries, also placed orders



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for the purchase and sale of portfolio securities and it furnished the services of such executive and clerical personnel as may have been required to perform administrative functions. Dreyfus Corp. and its officers and directors dominated and controlled the business operations and affairs of Dreyfus Fund.

8. Defendant International Telephone and Telegraph Corp. ("I.T.T.") is a Delaware corporation with its principal office at 320 Park Avenue, New York, N.Y.

9. Defendant, Lazard Freres & Co. ("Lazard Freres") is a partnership engaged in the investment banking business with its principal office at 44 Wall Street, New York, New York. Since 1965, Lazard Freres & Co. has earned in excess of \$6,500,000 in fees and commissions for services performed for I.T.T.

10. Defendant, Marine Midland Banks, Inc. ("Marine Midland") is a Delaware corporation with its principal office at 241 Main Street, Buffalo, New York.

11. Defendant, Dreyfus Marine Midland Management Corp. ("Dreyfus-Marine"), a New York corporation, is a joint venture undertaken by Dreyfus Corp. with Marine Midland. Dreyfus-Marine provides, and since August 1970, has provided investment management and investment advisory services to pension funds, profit-sharing plans and endowment accounts.

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Dreyfus-Marine is presently managing assets aggregating in excess of \$200,000,000 and maintains its office at 767 Fifth Avenue, New York, N.Y. At all times mentioned herein, Dreyfus Fund had no interest in and received no benefit from the operation of Dreyfus-Marine.

12. Defendant Howard Stein ("Stein") is and, at all relevant times herein, has been Chairman of the Board, President and an Investment Officer of Dreyfus Fund. He has also been Chairman of the Board of Dreyfus Corp. and Vice Chairman of Dreyfus-Marine. His address is 767 Fifth Avenue, New York, N. Y.

13. Defendant, Richard A.M.C. Johnson ("Johnson") is and, at all relevant times herein, has been a Vice-President, Director and an Investment Officer of Dreyfus Fund. He has been also a Vice-President of Dreyfus Corp. and president and a Director of Dreyfus-Marine. His address is 767 Fifth Avenue, New York, N.Y.

14. Defendant Julian M. Smerling ("Smerling") is and at all times relevant herein has been a Vice-President (Financial) of Dreyfus Fund and a Vice-President of Dreyfus Corp. His address is 767 Fifth Avenue, New York, N.Y.

15. Defendant, Lawrence M. Greene ("Greene") is and, at all relevant times herein, has been Secretary, Treasurer and an Investment Officer of Dreyfus Fund. He has also been Vice-President, General Counsel and a Director of Dreyfus Corp. His address is 767 Fifth Avenue, New York, N. Y.

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16. Under the terms of the investment advisory and management agreement between Dreyfus Fund and Dreyfus Corp., the latter manages the portfolio of investments of Dreyfus Fund subject to the approval of the Board of Directors of Dreyfus Fund. The said Board of Directors has authorized the Investment Officers of Dreyfus Fund to make investment decisions within the general investment policies of the said Board of Directors to be reported for Board approval at the next Board meeting. The said Investment Officers of Dreyfus Fund are the defendants Stein, Johnson and Greene, all of whom are officers and/or directors of Dreyfus Fund, Dreyfus Corporation and/or Dreyfus-Marine.

17. Defendant Felix G. Rohatyn ("Rohatyn") is a partner in Lazard Freres and is also a director of I.T.T. His address is 44 Wall Street, New York, N.Y.

18. Defendant Andre Meyer ("Meyer") is a partner in Lazard Freres and acted as the investment banker for I.T.T. in the acquisition of Hartford Fire Insurance Co. ("Hartford"). His address is 44 Wall Street, New York, N.Y.

19. From August 1970, and for a period prior thereto, both Marine Midland and Dreyfus Corp. had a direct interest in the success of Dreyfus-Marine and, during such period, Dreyfus Corp., its officers and directors, with actual and/or constructive knowledge, consent, cooperation and assistance of Marine Midland, I.T.T., Lazard Freres, Rohatyn and Meyer, engaged in seeking business opportunities for Dreyfus-Marine.

20. During the years 1969 to the date hereof, defendants Dreyfus Corp., Stein, Johnson, Smerling and Greene, for their personal profit and to promote the business success

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of Dreyfus-Marine, with the actual and/or constructive knowledge, consent, cooperation and assistance of defendants Dreyfus-Marine, Marine Midland, I.T.T., Lazard Freres, Rohatyn and Meyer, by the use of the mails and other means and instrumentalities of interstate commerce, relying upon and utilizing the advantageous position of fiduciaries and investment advisers of Dreyfus Fund:

(a) engaged in acts and practices, involving personal misconduct, constituting a breach of the fiduciary duties which they owed to Dreyfus Fund;

(b) employed a device, scheme or artifice to defraud Dreyfus Fund;

(c) engaged in transactions, practices and a course of conduct which operated to defraud and deceive Dreyfus Fund;

(d) acted in concert with defendants Lazard Freres, Rohatyn and Meyer who, as brokers for a party or parties other than Dreyfus Fund, knowingly effected the sale of securities to Dreyfus Fund, without prior disclosure in writing to Dreyfus Fund, of the circumstances and capacity in which they were acting in concert with the said broker-defendants Lazard Freres, Rohatyn and Meyer and without obtaining the consent of Dreyfus Fund to such transaction or transactions; and

(e) engaged in acts, practices and a course of conduct which, as to Dreyfus Fund, was fraudulent, deceptive and manipulative.

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21. A part of the said wrongs involved the utilization by Dreyfus Corp. of its position as investment manager and investment adviser of Dreyfus Fund, to obtain for Dreyfus-Marine the management of a pension fund controlled by I.T.T., under the following circumstances:

(a) In late 1969, I.T.T. was seeking to merge with Hartford and, so as to obtain a ruling from the Internal Revenue Service that such a merger would be a tax-free transaction for Hartford shareholders, I.T.T. agreed to dispose unconditionally of 1.7 million Hartford shares which it held;

(b) In November 1969, a sale by I.T.T. of the said 1.7 million shares was arranged through Lazard Freres to Mediobanca, a banking firm in Milan, Italy. The sale agreement provided that I.T.T. would bear the risk of any loss sustained by Mediobanca and further that Mediobanca would realize a profit on resale within a stated period of time;

(c) Defendants Rohatyn and Meyer had been involved in negotiations for I.T.T. to effect the merger with Hartford and were instrumental in arranging the sale to Mediobanca;

(d) Between November 1969 and late 1970, Mediobanca exchanged the aforementioned shares of Hartford for shares of I.T.T. and, again acting in concert with Lazard Freres, sold all or a portion of the latter shares to Dreyfus

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Fund, thereby relieving I.T.T. of its aforementioned contractual obligations to Mediobanca;

(e) On or about July 17, 1971, terms under which the United States Government was willing to settle litigation it had instituted challenging the merger of I.T.T. and Hartford, were privately revealed to officials of I.T.T. and of Lazard Freres. These terms were revealed to the public on or about July 31, 1971;

(f) Between August 1970 and July 1971, defendants Dreyfus-Marine, Dreyfus Corp., Stein, Johnson, Smerling and Greene were engaged in seeking business opportunities for Dreyfus-Marine and among the business opportunities which they pursued was the management of pension funds controlled by I.T.T.;

(g) To promote this business opportunity for Dreyfus-Marine, Dreyfus Corp. and the defendants Stein, Johnson, Smerling and Greene caused Dreyfus Fund to make an purchase of shares referred to in paragraph 21(d), supra, and that purchase did induce I.T.T. to award to Dreyfus-Marine the management of pension funds aggregating approximately \$10,000,000.;

(h) Defendants Dreyfus-Marine, Marine Mediobanca, I.T.T., Lazard Freres, Rohatyn and Meyer knew or should have known of the fiduciary relationship between Dreyfus Fund and the defendants Dreyfus Corp., Stein, Johnson, Smerling and Greene which prohibits self-dealing by them at the expense of and cost or loss to Dreyfus Fund.

Affidavit of Dermot G. Foley  
(December 14, 1972)

22. During the period from 1969

through 1971, Dreyfus Fund was in particularly grave need of the dedicated, competent and honest assistance of its officers and directors and of its investment manager and adviser. Total net assets of the Dreyfus Fund at the end of 1968 amounted to approximately \$2,666,400,000; by the end of 1969 they had declined to approximately \$2,398,200,000; by the end of 1970 they had further declined to approximately \$2,231,700,000. These losses were due in substantial part to the failure of defendants Dreyfus Corp., Stein, Johnson, Smerling and Greene to properly perform their fiduciary obligations to Dreyfus Fund and the defendants, other than Dreyfus Fund, are jointly and severally liable to Dreyfus Fund for the said losses.

23. Since I.T.T. and others, were willing to confer extra consideration upon those who controlled the purchasing power of Dreyfus Fund, there was a breach by defendants Dreyfus Corp., Stein, Johnson, Smerling and Greene of their duty to Dreyfus Fund by causing and permitting the value of such extra consideration realizable because of the sale of purchasing power of Dreyfus Fund to be diverted and channelled to Dreyfus-Marine for the enrichment of Dreyfus-Marine, Dreyfus Corp., Midland Marine and the individual defendants herein other than Rohatyn and Meyer. Defendants, other than Dreyfus Fund, are jointly and severally liable to Dreyfus Fund for the loss of the value of the aforesaid extra consideration.

24. Defendants' conduct deprived Dreyfus Fund, to its loss and damage, of the guidance, uninfluenced by motives

Affidavit of Dermot G. Foley  
(December 14, 1972)

of personal gain, of Dreyfus Corp. and of the defendants Stein, Johnson, Smerling and Greene to which Dreyfus Fund was entitled. Defendants, other than Dreyfus Fund, are jointly and severally liable to Dreyfus Fund for the loss and damage thereby sustained.

25. The defendants, other than Dreyfus Fund, participated, pursuant to a common plan and understanding among them, in bringing about the diversion and channeling of profits, earnings and assets from Dreyfus Fund to Dreyfus-Marine, thereby depriving Dreyfus Fund of the opportunity to earn profits the value of which Dreyfus-Marine has gained and will gain through the management of assets which have grown in volume since August 1970 and which now aggregate in excess of \$200,000,000. They are jointly and severally liable to Dreyfus Fund for the resulting profits which have been gained as a result of such diversion and channeling of profits, earnings and assets, and for the damages which have been sustained by Dreyfus Fund.

26. The defendants Dreyfus-Marine, Dreyfus Corp., Marine Midland, Stein, Johnson, Smerling and Greene benefited from the diversion and channeling of profits, earnings and assets from Dreyfus Fund and are jointly and severally liable to Dreyfus Fund for their resulting gains and profits and for the damages sustained by Dreyfus Fund.

27. The defendants, Dreyfus Corp., Stein, Johnson, Smerling and Greene by reason of their misuse of their



Affidavit of Dermot G. Foley  
(December 14, 1972)

positions of trust as fiduciaries of Dreyfus Fund, and the breach of their duties and obligations to Dreyfus Fund, are jointly and severally liable to Dreyfus Fund for the return of all charges, fees, salaries, commissions, and other compensation or consideration paid by Dreyfus Fund, to each and every one of them and to any entity controlled or owned in whole or in part by any of them, during the years 1969, 1970 and 1971.

28. By reason of the premises and by reason of the failure of the defendants, other than Dreyfus Fund, to disclose the self-dealing of Dreyfus Corp. and its officers and directors at the expense of Dreyfus Fund, the annual approval by Dreyfus Fund shareholders of the management and/or investment advisory agreements with Dreyfus Corp. and/or its subsidiaries, officers, directors, agents and/or employees for the years 1969 through 1971 was induced and obtained by fraud and was void and of no effect and the said agreements have lapsed. Defendants, other than Dreyfus Fund, are jointly and severally liable for all funds expended by Dreyfus Fund as a consequence of the said agreements, to Dreyfus Corp. or any of its subsidiaries, officers, directors, agents or employees.

29. The defendants, I.T.T., Midland Marine, Dreyfus-Marine, Lazard Freres, Rohatyn and Meyer, by reason of their participation in and encouragement of the breach of fiduciary duties owed to Dreyfus Fund by the other defendants named herein, other than Dreyfus Fund, are jointly and severally liable to Dreyfus Fund for all profits they derived from transactions with Dreyfus Fund during the years 1969

Affidavit of Dermot G. Foley  
(December 14, 1972)

through 1971.

30. Demand upon the Board of Directors of Dreyfus Fund to bring this action would be futile because:

(a) at the present time the majority of the said Board of Directors were directors of the Dreyfus Fund at the time of the transactions complained of herein, participated therein with knowledge or notice of their illegality and are subject to liability therefor;

(b) several directors of Dreyfus Fund are officers and/or directors of Dreyfus Corp. and/or Dreyfus-Marine and are subject to the domination and control of the said corporations and of individual defendants named herein;

(c) the directors of Dreyfus Fund are not free of interests adverse to the bringing of this action and the institution of this action by the directors of Dreyfus Fund would place it in hostile hands and would prevent its effective prosecution.

31. Demand upon the shareholders of Dreyfus Fund to bring this action would be futile and is unnecessary because:

(a) the wrongs alleged herein violated the law and are incapable of stockholder ratification;

(b) as a matter of law the management of Dreyfus Fund and of its affairs, including the bringing of lawsuits, is entrusted to its directors and not to its shareholders and the shareholders cannot, by resolution or otherwise

Affidavit of Dermot G. Foley

(December 14, 1972)

require Dreyfus Fund and its directors to effectively prosecute an action;

(c) Dreyfus Fund has many thousand shareholders scattered all over the United States and in foreign countries. Their identity is subject to frequent changes. To secure action from shareholders would require a proxy fight with management, which controls the proxy material of Dreyfus Fund and uses Dreyfus Fund's monies in preparing and mailing proxy material and soliciting shareholders' votes. The conduct of a proxy fight by plaintiff would entail prohibitive expenses and would cause undue loss of time, so that the claims alleged might become barred by the statute of limitations or laches.

WHEREFORE, judgment is prayed for:

(a) requiring defendants, other than Dreyfus Fund, to account for and jointly and severally to pay to Dreyfus Fund and its shareholder the profits gained by defendants and the losses sustained by Dreyfus Fund by reason of the wrongs alleged herein;

(b) rescinding the investment advisory and management agreements of Dreyfus Fund with Dreyfus Corp. and its subsidiaries and requiring each of the defendants, other than Dreyfus Fund, to return to Dreyfus Fund all fees, commissions, salaries or other compensation or consideration received by him or it or by any subsidiary of Dreyfus Corp. from Dreyfus Fund by virtue of the said agreements or otherwise during the years 1969, 1970 and 1971;

(c) impressing a constructive trust for

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Affidavit of Dermot G. Foley  
(December 14, 1972)

the benefit of Dreyfus Fund and its stockholders as to all profits and gains received by Dreyfus-Marine by reason of the wrongs complained of herein including the wrongful utilization by Dreyfus Corp. and its officers and directors of the positions they held as investment managers and advisors for Dreyfus Fund;

(d) impressing a constructive trust for the benefit of Dreyfus Fund and its stockholders as to all interest of each and every defendant herein in Dreyfus-Marine by reason of the fact that said Dreyfus-Marine acquired its value through the wrongful use by certain of the defendants herein of their positions of trust as fiduciaries of Dreyfus Fund;

(e) impressing a constructive trust for the benefit of Dreyfus Fund upon all profits and gains realized by the defendants I.T.T., Lazard Freres, Rohatyn and Meyer in any transaction wherein they participated in a breach of fiduciary duty owed by other defendants herein to Dreyfus Fund;

(f) allowing plaintiff the costs and expenses of this action including reasonable counsel fees; and

(g) granting such other and further relief as may be just.

KAPLAN, KILSHEIMER & FOLEY

by: *Dermot G. Foley*  
A Member of the Firm

Attorneys for Plaintiff Leon Sagan  
Office and P. O. Address  
122 East 42nd Street  
New York, New York 10017  
(212) MU 7-1980

Affidavit of Dermot G. Foley  
(December 14, 1972)

V E R I F I C A T I O N

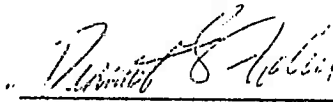
STATE OF NEW YORK )

COUNTY OF NEW YORK )

DERMOT G. FOLEY, being duly sworn, deposes and says:

That he is admitted to practice in this Court and the courts of New York State, and is a member of the firm of Kaplan, Kilsheimer & Foley, the attorneys of record for Leon Segan, plaintiff in the within action; that deponent has read the foregoing Complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true. Deponent further says that the reason this verification is made by deponent and not by the aforesaid plaintiff is that the aforesaid plaintiff resides outside of the county in which deponent has his office.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows: documents and records and conversations with the aforesaid plaintiff and others.

  
Dermot G. Foley

Sworn to before me this  
19th day of October, 1972.

JOE KAPLAN  
Notary Public, State of New York  
No. 00-7157341  
Qualified in Bronx County  
Certificate filed in New York County  
Commission Expires March 30, 1974

Affidavit of Dermot G. Foley  
(December 14, 1972)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
DAVID SEGAL,

Plaintiff,

v.

COMPLAINT

COBURN CORPORATION OF AMERICA, IRVING  
BERNSTEIN, DAVID DRUCKMAN, EDWARD KAVINOKY,  
VITO MARINO, LAWRENCE GORDON, HAROLD LINDEN,  
BENJAMIN KOONDAL, MICHAEL MISKULIN, SEYMOUR  
ROSENBERG, MURRAY WEISS, JACK WILDER, LEONARD  
CARTER, MAURICE FRIEDMAN, LIONEL GOLDBERG,  
IRA ROSENBERG, and COLONIAL COMMERCIAL CORP.,

Defendants.  
-----X

Plaintiff by his attorney alleges:

1. This count is brought under §22(a) of the Securities Act of 1933, 15 U.S.C. §77v(a) and under §27 of the Securities Exchange Act to enforce a liability created by §§12, 15 and 17 of the Securities Act, 15 U.S.C. §§2, 10, 13, 14, 18, 20 and 29 of the Securities Exchange Act and the rules of the Securities and Exchange Commission.
2. The plaintiff who is and was at all times hereinafter set forth a stockholder of Coburn Corporation of America (hereinafter referred to as Coburn) brings this action for the benefit of Coburn.
3. Upon information and belief the defendants Irving Bernstein, David Druckman, Edward Kavinsky, Vito Marino, Lawrence Gordon, Harold Linden, Benjamin Koondal, Michael Miskulin, Seymour Rosenberg, Murray Weiss, Jack Wilder, Leonard Carter, Maurice Friedman, Lionel Goldberg, and Ira Rosenberg were all directors of Coburn and dominated and controlled Coburn at the time of the acts complained of.
4. Upon information and belief in or about early 1970 Colonial Commercial Corp. (hereinafter referred to as Colonial) had threatened to obtain control of Coburn and oust management of Coburn from control of it.

*EXHIBIT "B"*

Affidavit of Dermot G. Foley  
(December 14, 1972)

5. Upon information and belief defendants pursuant to a common plan, scheme, and conspiracy directly and indirectly through the use of the mails and other instrumentalities of interstate commerce in the Eastern District of New York engaged in artifices, schemes, and devices to defraud Coburn and its stockholders in connection with the purchase and sale of securities.
6. Upon information and belief the defendants pursuant to a common plan, scheme and conspiracy sold securities belonging to Coburn to Colonial for less than adequate consideration.
7. Upon information and belief the aforesaid consideration furnished by Colonial included securities.
8. Upon information and belief Coburn has been damaged in a sum in excess of \$5,000,000 by reason of the above acts of the defendants.
9. The within action was not brought collusively to confer jurisdiction on a Court of the United States of an action which it would not otherwise have jurisdiction.
10. Plaintiff has no adequate remedy at law.
11. Demand on the Board of Directors of Coburn to bring this action would be futile since at least a majority of the directors participated in the wrongful acts complained of.

WHEREFORE, plaintiff prays for judgment:

- A) in the amount of the damages sustained by Coburn and its stockholders by reason of the aforesaid acts of the defendants;
- B) awarding costs and expenses of this action, including reasonable counsel and accountant's fees, to the plaintiff; and
- C) for such other and further relief as may be just and proper.

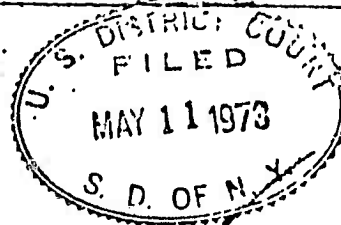
Plaintiff asks for a jury trial.

Dated: Brooklyn, New York  
June 1, 1970

*/s/ Avrom S. Fischer*  
AVROM S. FISCHER  
Attorney for Plaintiff  
915 East 17th Street  
Brooklyn, New York 11230  
252-7355

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MEMORANDUM DECISION OF JUDGE CANNELLA  
FILED MAY 11, 1973

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



LEON SEGAN,

Plaintiff,

-against-

72 Civ.1551

DREYFUS CORPORATION, MARINE MIDLAND BANKS, INC.,  
DREYFUS MARINE MIDLAND MANAGEMENT CORP.,  
INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION,  
LAZARD FRERES & CO., HOWARD STEIN, RICHARD A.M.C.  
JOHNSON, JULIAN M. SMERLING, LAWRENCE M. GREENE,  
FELIX G. ROHATYN, ANDRE MEYER, and the  
DREYFUS FUND, INC.,

Defendants.

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MEMORANDUM

CANNELLA, J.

The motions to dismiss the amended complaint, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to comply with Rule 9(b) thereof are denied. The motions, pursuant to Rule 12(e), for the filing of a more definite statement by reason of plaintiff's failure to comply with Rule 9(b) are granted.



Memorandum Decision of Judge Cannella  
Filed May 11, 1973

In this stockholder's derivative action plaintiff combines in a single count broad and conclusory allegations of fraud with allegations stating with particularity the circumstances of an ITT transaction, so-called. The pleading might be upheld if so framed as to make the allegations of the ITT transaction the circumstances constituting the alleged fraud. It is clear, however, that such is not the plaintiff's design. The affidavit of plaintiff's attorney evidences plaintiff's theory that he may set forth one instance of alleged fraud as a "typical example" (P.7, ¶11, Foley affidavit), and as "an illustration of the flagrant misconduct" (P.9, ¶12), and not only thereby comply with Rule 9(b), but use the example as a springboard for a sweeping inquiry into all acts of the defendants in an effort to discover other instances of misconduct.

The requirements of Rule 9(b) that "the circumstances constituting fraud . . . shall be stated with particularity", are not met by alleging examples or illustrations where multiple charges are made or intended. "A complaint alleging fraud should be filed only after a wrong is reasonably

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Memorandum Decision of Judge Cannella  
Filed May 11, 1973

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believed to have occurred; it should serve to seek redress for a wrong, not find one". Segal v. Gordon, 467 F.2d 602, 607-608 (2nd Cir. 1972).

The motions to dismiss the amended complaint accordingly are denied and the motions for a more definite statement are granted.

So ordered.

Dated: New York, N. Y.  
May 11, 1973

John M. Cannella  
U. S. D. J.

PLAINTIFF'S NOTICE OF MOTION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
LEON SEGAN,

Plaintiff,

NOTICE OF MOTION  
72 Civil 1551 (JMC)

-against-

DREYFUS CORPORATION, et al,

Defendants.  
-----X

SIRS:

PLEASE TAKE NOTICE, that upon the amended complaint, the motion of certain defendants pursuant to Rules 12(b)(6) and 12(e) of the Federal Rules of Civil Procedure, the papers and memoranda filed with this court relative to that motion, the order of this court filed on May 11, 1973, the affidavit of DERMOT G. FOLEY, sworn to the 12th day of September, 1973, and all prior papers and proceedings, the undersigned moves this court for an order, pursuant to Rules 26 and 27 of the Federal Rules of Civil Procedure, permitting the plaintiff to take discovery of defendants for the purpose of framing a more definite statement to be filed herein as an amended complaint, by reason of the fact that this court has ruled that more specific allegations relevant to the fraudulent course of conduct pleaded in the amended complaint herein are necessary.

PLEASE TAKE FURTHER NOTICE, that such motion is to be heard at the United States Courthouse, Foley Square, New York, New York, Room 1001, before Judge John M. Cannella, U.S.D.J., on the 16th day of October, 1973, at 2 P.M., or at such other time

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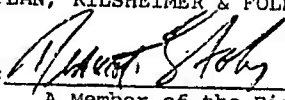
Plaintiff's Notice of Motion

or place as the court shall direct.

Dated: New York, New York  
September 12, 1973.

Yours, etc.,

KAPLAN, KILSHEIMER & FOLEY

By:   
A Member of the Firm

Attorneys for Plaintiff  
122 East 42nd Street  
New York, New York 10017  
687-1980

TO: WORMSER, KIELY, ALLESSANDRONI,  
MAHONEY & McCANN  
Attorneys for Defendant  
International Telephone and  
Telegraph Corporation  
100 Park Avenue  
New York, New York 10017

COUDERT BROTHERS  
Attorney for Defendant  
Dreyfus Marine Midland  
Management Corp.  
200 Park Avenue  
New York, New York 10017

PAUL, WEISS, RIPKIND, WHARTON  
& GARRISON  
Attorneys for Defendants Lazard Freres  
& Co., Felix G. Rohatyn, Andre Meyer  
345 Park Avenue  
New York, New York 10022

SULLIVAN & CROMWELL  
Attorneys for Marine Midland Banks  
48 Wall Street  
New York, New York 10005

STROOCK & STROOCK & LAVAN  
Attorneys for The Dreyfus Fund, Inc.  
61 Broadway  
New York, New York 10006

ROYALL, KOEGEL & WELLS  
Attorneys for Defendants  
Dreyfus Corporation, Howard Stein,  
Richard A.M.C. Johnson, Julian M. Smerling  
and Lawrence M. Greene  
200 Park Avenue  
New York, New York 10017

AFFIDAVIT OF DERMOT G. FOLEY  
(SEPTEMBER 12, 1973)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
LEON SEGAN, :  
 :  
Plaintiff, : 72 CIV 1551 - J.M.C.  
 :  
-against- :  
 : AFFIDAVIT  
DREYFUS CORPORATION, et al, :  
 :  
Defendants. :  
----- x

STATE OF NEW YORK )  
 : SS:  
COUNTY OF NEW YORK )

DERMOT G. FOLEY, being duly sworn, deposes and says:

1. I am an attorney admitted to practice before this Court and a member of the firm of KAPLAN, KILSHEIMER & FOLEY, the attorneys for the plaintiff herein.

2. This affidavit is submitted in support of the motion for permission to conduct discovery for the purpose of framing a more definite statement to be filed as an amended complaint.

3. The complaint herein alleges, inter alia, that the defendants engaged in a wrongful course of conduct for a substantial period of time in the course of which they improperly utilized the purchasing power of defendant, Dreyfus Fund, to obtain valuable business opportunities for defendant, Dreyfus Marine Midland Management Corp., and that the accounts, which are the basis of the business conducted by said Dreyfus Marine Midland Management Corp. were substantially all secured as the result of such improper conduct.

4. The complaint furnishes an illustration of the manner in which this was achieved by detailing a transaction

Affidavit of Dermot G. Foley  
(September 12, 1973)

involving the transfer of securities from the defendant, International Telephone and Telegraph Corporation ("ITT"), to an Italian bank ("Mediobanca") with subsequent reconveyance to the Dreyfus Fund under terms and conditions satisfactory to defendant, ITT. Subsequently, in consideration for thus accomodating ITT, approximately \$10,000,000 of pension funds were placed, for management, with Dreyfus Marine Midland Management Corp., a joint venture of defendant, Marine Midland Banks, Inc., and defendant, Dreyfus Corporation. Thus the Dreyfus Fund, Inc., whose purchasing power was used to accomplish the transaction, was excluded from the benefits thereof.

5. Thereafter, a motion was made by certain defendants on the basis of the decision in Segal v. Gordon, et al., 467 Fed. 2nd 602, CCH Fed. Sec. L. Rep. Para. 93,590 (2 Cir., 1972), seeking dismissal of the amended complaint or in the alternative, an order requiring the filing of a more definite statement, on the grounds that failure to itemize all of the transactional data respecting the entire course of conduct, as opposed to the use of illustrative transactions was violative of Rule 9(b) of the Federal Rules of Civil Procedure. The position of the moving defendants clearly was that all such transactional data is required in the complaint including the names of all the individuals involved and the dates and other details of each specific transaction. The order of this Court disposing of said motion appears to have substantially adopted the position of the moving defendants.

6. As has heretofore been made known to this Court, plaintiff's attorneys conducted an investigation prior to the institution of this action in the course of which they discovered sound reasons for belief that the fraudulent course of conduct, as pleaded in the complaint in fact occurred. However, plaintiff's

Affidavit of Dermot G. Foley  
(September 12, 1973)

attorneys are not free to furnish the details which defendants contend are required in the complaint for two reasons. The first is that while a generalized knowledge of the matter is possessed by plaintiff's attorneys it is doubtful that such knowledge extends to the point where the minute details can be supplied fully in the complaint. Secondly, it is the firm conviction of plaintiff's attorneys that revelation of some of the information now in their hands will open the door to the revelation of the confidential sources of information upon which we rely. Therefore, to satisfy the requirements which defendants have urged upon this Court, plaintiff wishes to conduct discovery which will be needed to furnish the factual allegations called for in the more definite statement ordered by this Court. As an alternative, plaintiff will be compelled to withdraw portions of the complaint herein and limit this action to damages arising from defendants' activities to the above-mentioned ITT-Mediobanca transaction and to the consequences of the failure by the defendant, Dreyfus Corporation, in seeking renewal of its management and advisory agreements with The Dreyfus Fund, Inc., to reveal to Dreyfus Fund shareholders the conflicting interests and the infidelity involved in the role that Dreyfus Corporation played in the said transaction. While this would still be substantial, it is by no means as extensive as the action as originally pleaded herein.

7. Plaintiff, therefore, needs discovery to aid in the framing of a more definite statement respecting the complaint now on file, which will disclose the minute details required in the complaint.

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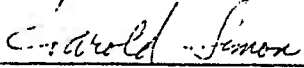
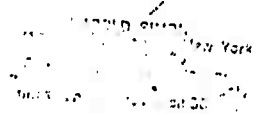
Affidavit of Dermot G. Foley  
(September 12, 1973)

8. Deponent respectfully requests this Court  
in the light of the circumstances of this case, to grant the  
relief sought herein. .

  
Dermot G. Foley

Sworn to before me this

12th day of September, 1973.



DEFENDANT'S NOTICE OF CROSS-MOTION\*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
LEON SEGAN, :  
 :  
Plaintiff, : 72 Civ. 1551 (JMC)  
 :  
-against- :  
 : NOTICE OF CROSS-MOTION  
DREYFUS CORPORATION, et al., :  
 :  
Defendants. :  
 :  
-----X

SIRS:

PLEASE TAKE NOTICE, that upon all prior pleadings and proceedings in this action and the annexed affidavit of LAWRENCE M. GREENE, sworn to the 9<sup>th</sup> day of October, 1973, the undersigned defendants will cross-move this Court on the 16th day of October, 1973, at 2:00 P.M., in the United States Courthouse, Foley Square, New York, New York, in Room 1001, or at such other time and place as the court shall direct for an Order pursuant to Rules 12(e) and 41(b) of the Federal Rules of Civil Procedure striking the complaint and dismissing the action with prejudice on the ground that plaintiff has failed to comply with the Order of this Court dated May 11, 1973, requiring plaintiff to file a more definite statement.

Dated: New York, New York  
October 9, 1973

Yours, etc.,

ROGERS & WELLS

By: Harold A. Wells  
A Member of the Firm

Attorneys for Defendants  
Dreyfus Corporation, Howard  
Stein, Richard A.M.C. Johnson,  
Julian M. Smerling and Lawrence  
M. Greene  
200 Park Avenue  
New York, New York 10017

\* All Defendants other than Dreyfus Fund joined in this Cross-Motion.

Defendant's Notice of Cross-Motion

TO: KAPLAN KILSHEIMER & FOLEY  
Attorneys for Plaintiff  
122 East 42nd Street  
New York, New York 10017

WORMSER, KIELY, ALESSANDRONI,  
MAHONEY & McCANN  
Attorneys for Defendant  
International Telephone and  
Telegraph Corporation  
100 Park Avenue  
New York, New York 10017

COUDERT BROTHERS  
Attorneys for Defendant  
Dreyfus Marine Midland  
Management Corp.  
200 Park Avenue  
New York, New York 10017

PAUL, WEISS, RIFKIND,  
WHARTON & GARRISON  
Attorneys for Defendants  
Lazard Freres & Co., Felex G.  
Rohatyn, Andre Meyer  
345 Park Avenue  
New York, New York 10022

SULLIVAN & CROMWELL  
Attorneys for Marine Midland Banks  
48 Wall Street  
New York, New York 10005

STROOCK & STROOCK & LAVAN  
Attorneys for The Dreyfus Fund, Inc.  
61 Broadway  
New York, New York 10006

COVINGTON & BURLING  
Attorneys for Defendant  
International Telephone and  
Telegraph Corporation  
888 Sixteenth Street N.W.  
Washington, D.C. 20006

AFFIDAVIT OF LAWRENCE M. GREEN  
(October 9, 1973)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
LEON SEGAN, :  
 :  
Plaintiff, :  
 :  
-against- : 72 Civ. 1551 (JMC)  
DREYFUS CORPORATION, et al., :  
 :  
Defendants. :  
----- x

AFFIDAVIT OF LAWRENCE M. GREENE  
IN OPPOSITION TO MOTION FOR  
DISCOVERY AND IN SUPPORT OF  
CROSS-MOTION TO DISMISS

STATE OF NEW YORK )  
 : ss.:  
COUNTY OF NEW YORK )

LAWRENCE M. GREENE, being duly sworn, deposes and  
says:

1. I am an attorney duly admitted to practice before the courts of this state and am a member of the Bar of this Court. I am the general counsel, and an officer and director of defendant, Dreyfus Corporation ("Dreyfus"), and an officer of defendant, The Dreyfus Fund, Inc. ("Dreyfus Fund"). I am one of the defendants in this action.
2. I submit this affidavit in opposition to plaintiff's motion for discovery and in support of defendant's cross-motion to dismiss the complaint.
3. This action was commenced approximately one and one-half years ago and alleges that I and various of the Dreyfus officers and directors have engaged in a continuing course of fraudulent conduct, extending over a period of three years, in respect of our management of The Dreyfus Fund.

Affidavit of Lawrence M. Green  
(October 9, 1973)

4. Because the complaint was lacking in factual specificity, defendants moved inter alia, for an order requiring plaintiff to comply with Rule 9(b) of the Federal Rules of Civil Procedure, which provides that "in all instances of fraud . . . the circumstances constituting fraud shall be stated with particularity." On May 11, 1973, this Court granted that motion and directed plaintiff to file a more definite statement. A copy of the Court's Memorandum Order is annexed hereto as Exhibit A.

5. I am advised by my counsel that subsequent to the Court's Order of May 11, 1973, plaintiff's counsel asked for and obtained an extension of time to comply with or otherwise respond to the directions contained in the Court's Order to and including July 2, 1973; that plaintiff's counsel thereafter requested an additional extension to September 4, 1973, but that no formal stipulation was entered into because of disagreement among counsel as to other matters not here relevant; and that September 4, 1973 came and went without plaintiff having taken any steps to comply with the Court's Order.

6. I am further informed by counsel that on September 12, 1973, plaintiff's counsel served a motion which, in effect, seeks the functional equivalent of pre-complaint discovery in this action.

7. As the Court is well aware, any allegation of fraud is a serious matter. When directed against professional fiduciaries such as myself and my fellow directors, it casts a cloud which, until removed, can cause incalculable harm particularly where the fraud is alleged to have occurred in the course of and in connection with our professional duties.

Affidavit of Lawrence M. Green  
(October 9, 1973)

This is particularly so in our case because this lawsuit and the allegations charged in the complaint must be described in all current prospectuses of the mutual funds managed and sold by Dreyfus; in the public reports filed with the Securities and Exchange Commission by Dreyfus; in its annual report to stockholders; and in all proxy statements for Dreyfus and the funds which it manages.

8. We have now been living under this cloud for almost 18 months. As a matter of elementary fairness, we are entitled to know what frauds we are accused of having perpetrated. The Court, almost five months ago, directed plaintiff to supply us with this information. Instead of doing so, however, plaintiff's counsel has filed a motion which seeks to perpetuate these vague and formless charges while subjecting us at the same time to extensive, burdensome and time-consuming discovery of a type which, I am advised, is nowhere authorized by the Federal Rules of Civil Procedure and is directly contrary to the purposes of Rule 9(b).

9. It seems clear that plaintiff is probably unable, and certainly unwilling, to specify the frauds which we are alleged to have committed. I respectfully submit that elementary considerations of fairness dictate that plaintiff's motion to engage in pre-complaint discovery should be denied, and that this action should now be dismissed.

*Lawrence M. Green*  
\_\_\_\_\_  
LAWRENCE M. GREENE

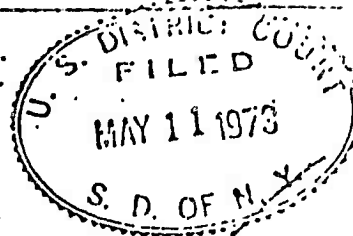
Sworn to before me this  
9th day of October, 1973.

*Stella Freiberg*  
\_\_\_\_\_  
Notary Public  
STELLA FREIBERG  
NOTARY PUBLIC, State of New York  
No. 41-1309500 (Qual. in Queens Co.  
Court, filed in New York County  
Commission Expires March 12, 1975

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Affidavit of Lawrence M. Green  
(October 9, 1973)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



LEON SEGAN,

Plaintiff,

-against-

72 Civ.1551

DREYFUS CORPORATION, MARINE MIDLAND BANKS, INC.,  
DREYFUS MARINE MIDLAND MANAGEMENT CORP.,  
INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION,  
LAZARD FRERES & CO., HOWARD STEIN, RICHARD A.M.C.  
JOHNSON, JULIAN M. SMERLING, LAWRENCE M. GREENE,  
FELIX G. ROHATYN, ANDRE MEYER, and the  
DREYFUS FUND, INC.,

Defendants.

FILED

MAY 12 1973

MEMORANDUM

CANNELLA, J.

The motions to dismiss the amended complaint, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to comply with Rule 9(b) thereof are denied. The motions, pursuant to Rule 12(e), for the filing of a more definite statement by reason of plaintiff's failure to comply with Rule 9(b) are granted.

Affidavit of Lawrence M. Green  
(October 9, 1973)

In this stockholder's derivative action plaintiff combines in a single count broad and conclusory allegations of fraud with allegations stating with particularity the circumstances of an ITT transaction, so-called. The pleading might be upheld if so framed as to make the allegations of the ITT transaction the circumstances constituting the alleged fraud. It is clear, however, that such is not the plaintiff's design. The affidavit of plaintiff's attorney evidences plaintiff's theory that he may set forth one instance of alleged fraud as a "typical example" (P.7, ¶11, Foley affidavit), and as "an illustration of the flagrant misconduct" (P.9, ¶12), and not only thereby comply with Rule 9(b), but use the example as a springboard for a sweeping inquiry into all acts of the defendants in an effort to discover other instances of misconduct.

The requirements of Rule 9(b) that "the circumstances constituting fraud . . . shall be stated with particularity", are not met by alleging examples or illustrations where multiple charges are made or intended. "A complaint alleging fraud should be filed only after a wrong is reasonably

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Affidavit of Lawrence M. Green  
(October 9, 1973)

believed to have occurred; it should serve to seek redress  
for a wrong, not find one". Segal v. Gordon, 467 F.2d 602,  
607-608 (2nd Cir. 1972).

The motions to dismiss the amended complaint  
accordingly are denied and the motions for a more definite  
statement are granted.

So ordered.

Dated: New York, N. Y.  
May 11, 1973

John M. Cannella  
U. S. D. J.



AFFIDAVIT OF EDWARD N. COSTIKYAN  
(October 10, 1973)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
LEON SEGAN, :  
Plaintiff, : 72 Civ. 1551 (JMC)  
-against- :  
DREYFUS CORPORATION, et al., : AFFIDAVIT  
Defendants. :

-----X  
STATE OF NEW YORK:COUNTY OF NEW YORK SS:  
EDWARD N. COSTIKYAN, being duly sworn, says:

1. I am a member of the firm of Paul, Weiss, Rifkind, Wharton & Garrison, attorneys for defendants Lazard Freres & Co., Felix G. Rohatyn and Andre Meyer in the above action. I make this affidavit in opposition to plaintiff's motion for discovery, and in support of a cross-motion to dismiss the action with prejudice pursuant to Rules 12(e) and 41(b) of the Federal Rules of Civil Procedure.

2. I have read the Notice of Motion of defendants Dreyfus Corporation, Howard Stein, Richard A.M.C. Johnson, Julian M. Smerling and Lawrence M. Greene, dated October 9, 1973, the affidavit of Lawrence M. Greene in support thereof and in opposition to plaintiff's motion, and the memorandum of law submitted in connection therewith by attorneys for the Dreyfus defendants.

3. On the basis of the reasons set forth in Mr. Greene's affidavit and the supporting memorandum of law, defendants Lazard Freres & Co., Felix G. Rohatyn and Andre

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Affidavit of Edward N. Costikyan  
(October 10, 1973)

Meyer oppose plaintiff's motion for discovery and join in the cross-motion to dismiss; and respectfully request that the relief sought on behalf of the Dreyfus defendants be granted to the Lazard defendants as well.

s/  
Edward N. Costikyan

Sworn to before me this  
10<sup>th</sup> day of October, 1973.

Notary Public

SYLVIA A. COLOONER  
Commissioner of Deeds  
City of New York A-665  
Certificate Filed in New York County  
Commission Expires New York

AFFIDAVIT OF DERMOT G. FOLEY  
(October 16, 1973)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
LEON SEGAN, :  
 :  
Plaintiff, : 72 Civ. 1551 (JMC)  
 :  
- against - :  
 : AFFIDAVIT  
DREYFUS CORPORATION, et al., :  
 :  
Defendants. :  
-----X

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

DERMOT G. FOLEY, being duly sworn, deposes and says:

1. I am a member of Kaplan, Kilsheimer & Foley, attorneys for plaintiff herein. I submit this affidavit as a reply to defendants' papers opposing plaintiff's motion for discovery and, further, in opposition to defendants' cross-motion for dismissal of the complaint herein with prejudice.

2. Much of defendants efforts in the papers to which we now reply are given to argument based on characterizations of the pleadings and papers heretofore filed in this action and also of this Court's memorandum decision of May 12, 1973. Thus, a position is designated as "frivolous", interrogatories are "horrendous" and the Court is reported as rejecting defendants' version of certain of plaintiff's arguments

Affidavit of Dermot G. Foley  
(October 16, 1973)

which the Court did not even discuss in its opinion. Mischaracterization of an opponent's position for the purpose of creating and then attacking a straw man is widespread in the practice of law and, without becoming involved in this sort of tactic, I wish to draw the Court's attention to this aspect of defendants papers. I am confident, however, that the motions now before the Court will be decided on their merits. I now turn to points raised by defendants.

3. It is claimed that there has been a lapse of time of close to five months since the memorandum decision directing plaintiff to file a more definite statement and that this, in itself, is harmful and burdensome to certain defendants. This is a misleading argument. Defendants do much to undercut it when they admit that they agreed to extensions of time to comply or otherwise respond to the May 12th order until a few days before plaintiff's present motion was served upon them. Indeed, throughout this period defendants' counsel were informed that plaintiff was considering this very type of motion prior to attempting to formulate a more definite statement. Thus, it is strange, at best, to now hear defendants claim injury due to delay when they readily agreed to all but a few days of that delay

Affidavit of Dermot G. Foley  
(October 16, 1973)

without protest of any sort. (Incidentally, in their desire to picture their new-found injury, defendants have engaged in a little innocent exaggeration - the time period from the May 12 order to the service of motion papers on September 12 was exactly four (4) months, not "close to five months".)

4. Defendants further claim injury from the pendency of this action for some 18 months. This can hardly be so for an examination of the record will show that a large number of the extensions of time granted herein to perform various acts, were requested by them. Never, until now, has there been a murmur of protest or objection from them about the lapse of time. On the contrary, they have been fully cooperative in setting the pace of this action.

5. Defendants contention that plaintiff is unwilling to furnish certain minute specifics of fraud, evades what is at issue here. We have sought to persuade the Court that there are unique conditions in this case which, we believe, justify discovery before the filing of the more definite statement. The purpose of such discovery is to facilitate the filing of the very statement which defendants claim we are unwilling to furnish.

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Affidavit of Dermot G. Foley  
(October 16, 1973)

6. The minute transactional details which defendants have claimed, with apparent success, are required to be pleaded in the complaint, are of a type which are most completely within the knowledge of defendants. We have repeatedly and candidly explained the extent and nature of our knowledge of these matters and the unnecessary problems which exposure of our work-produce can create. These details have been discussed at length in our papers submitted in opposition to defendants' Rule 9(b) motion and in our original papers supporting our present motion. We are convinced that they are known to the Court.

7. Defendants efforts to compare the complaint herein with that in Segal v. Gordon, 467 F2d. 602 (2d Cir. 1972), can be disposed of by a comparison of two complaints. Indeed, this has been done in papers which we filed herein in opposition to defendants Rule 9(b) motion. The attempt to compare the two strains both beyond recognition. The Segal complaint, running all of a page and a half in length was devoid of factual allegations concerning the

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Affidavit of Dermot G. Foley  
(October 16, 1973)

fraud. We have a lengthy and highly detailed complaint which the Court found objectionable, not because of the absence of detail, but because we concentrated on certain transactions as an example of the manner in which the subject fraud was executed. We are seeking to remedy this problem by the present motion which, if granted, will not only facilitate access to facts to flesh out the basic facts which know and have pleaded, but also will protect the confidential sources of information which we have been able to use so far.

8. The comparison with the facts of the Segal case reaches total unreality when defendants suggest that each of the cases was "triggered off by a newspaper report". The answer simply is that this is not so in the present case and I sincerely believe that the defendants are well aware of that fact. They have been informed, and, indeed, we have also told this Court, that this action was preceded by an exhaustive investigation. We have not relied in any way on newspaper stories. The plaintiff first became suspicious of the defendants due to a report in either the New York Times or the Wall Street Journal. But

Affidavit of Dermot G. Foley  
(October 16, 1973)

such stories did not contain the detail which is to be found in the complaint. It was the investigation which triggered the case and it is misleading to characterize the complaint as a mere product of a newspaper report. The investigation which we conducted did indeed disclose a wrong. In some respects it disclosed that wrong in great detail while in other respects less detail was uncovered but enough evidence was obtained to lead to it. Obviously no such situation existed in Segal.

9. To characterize the requested discovery as a "fishing expedition" (citing a 1942 case) similarly misses the mark. The defendants know perfectly well what we hope to obtain in this way and they know the basis for our expectations. Defendants persuaded this Court of the necessity of the detailed pleading of transactional data. There is no mystery as to what we want or from whom we wish to obtain it. If they find the interrogatories as "horrendous" as they evidently expect, they know how to approach that problem. We feel that reasonable interrogatories afford a more expeditious method for getting at the needed material than do depositions.



A. Affidavit of Dermot G. Foley  
(October 16, 1973)

In the final analysis, we submit that the requested discovery is quite appropriate despite defendants' desire that it not take place.

10. Defendants' cross-motion should be denied as a sound and just exercise of this Court's discretion. The proposal that there be dismissal with prejudice merely carries an unfortunate suggestion further than, possibly, it was ever intended to go. This Court has already recognized, in its memorandum decision of May 12, 1973, that the pleading of the ITT-Medibanca transaction meets even the standard of pleading urged by the defendants. To dismiss the pleading respecting this transaction and the consequences which flowed from it, with prejudice, would simply grant the defendants a totally unwarranted release from the results of their wrongdoing. As has been indicated above, and conceded in defendants' papers, the parties were in essential agreement on delay in compliance with the May 12 order for all but the last few days before service of plaintiffs' present motion. To seek dire and drastic penalties in light of this background is simply unrealistic.

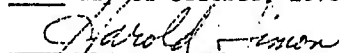
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Affidavit of Dermot G. Foley  
(October 16, 1973)

WHEREFORE, we respectfully request  
the Court to grant plaintiff's motion in full and  
to deny the cross-motion of defendants.

  
DERMOT G. FOLEY

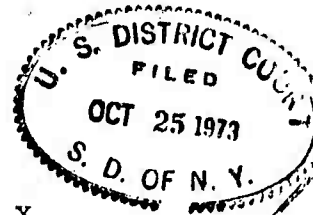
Sworn to before me this  
16<sup>th</sup> day of October, 1973.



HAROLD SIMON  
Notary Public, State of New York  
No. 8-015600  
County of New York  
Commission Expires March 30, 1974

MEMORANDUM DECISION OF JUDGE CANNELLA  
FILED OCTOBER 25, 1973

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



LEON SEGAN,

Plaintiff,

-against-

72 Civ.1551

DREYFUS CORPORATION, MARINE MIDLAND BANKS,  
INC., DREYFUS MARINE MIDLAND MANAGEMENT CORP.,  
INTERNATIONAL TELEPHONE AND TELEGRAPH CORP.,  
LAZARD FRERES & CO., HOWARD STEIN, RICHARD A.M.C.  
JOHNSON, JULIAN M. SMERLING, LAWRENCE M. GREENE,  
FELIX G. ROHATYN, ANDRE MEYER, AND THE  
DREYFUS FUND, INC.,

Defendants.

MEMORANDUM

CANNELLA, J.

The plaintiff moves pursuant to Rules 26 and 27 of the Federal Rules of Civil Procedure for an order permitting the plaintiff to take discovery of the defendants for the purpose of framing the more definite statement which was ordered to be filed by the court on May 11, 1973. The several defendants by their respective attorneys oppose the motion and cross-move pursuant to Rules 12(e) and 41(b) for an order striking the amended complaint and dismissing the action with prejudice because of the plaintiff's failure

Memorandum Decision of Judge Cannella  
Filed October 25, 1973

to comply with Rule 9(b) and the said order. The plaintiff's motion is denied. The cross-motions are granted to the extent that the amended complaint is dismissed without prejudice.

The court finds no authority under Rule 26 which permits discovery in support of an infirm complaint such as has been found here. To permit such discovery would be violative of Rule 9(b) and the instruction given to this court in *Segal v. Gordon*, 467 F.2d 602 (2d Cir.1972). Rule 27 also relied upon by the plaintiff is without application. The Rule applies to the perpetuation of testimony of the petitioner or of another person regarding any matter that may be cognizable in a court of the United States, clearly not the purpose here.

The plaintiff persists in the attitude that he does have information which will enable him to comply with the order of the court and yet declines to do so unless permitted the unwarranted exploration of the defendants' businesses and affairs now sought.

The plaintiff's motion for discovery is denied. The defendants' motions to strike the complaint and dismiss the action are granted, but without prejudice.

So ordered.

Dated: New York, N.Y.  
October 25, 1973

John M. Cannella  
U.S.D.J.

## CLERK'S CERTIFICATE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK.

ESSEX

JUDGE

**CANNELLA**

LEON SEGAN,

Plaintiff,

-against-

DREYFUS CORPORATION, MARINE MIDLAND BANKS,  
INC., DREYFUS MARINE MIDLAND MANAGEMENT  
CORP., INTERNATIONAL TELEPHONE AND TELE-  
GRAPH CORP., LAZARD FRERES & CO., HOWARD  
STEIN, RICHARD A.M.C. JOHNSON, JULIAN M.  
SMERLING, LAWRENCE M. GREENE, FELIX  
G. ROHATYN, ANDRE MEYER, AND THE DREYFUS  
FUND, INC.,

Defendants.

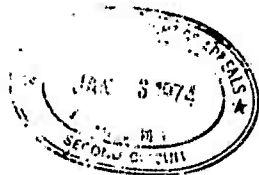
Case # **72 CIV 1551**

CLERK'S CERTIFICATE.

I, **RAYMOND F. BURGHARDT**, Clerk of the District Court  
of the United States for the Southern District of New York,  
do hereby certify that the certified copy of docket entries  
lettered A- **E**, and the original filed papers numbered  
1 thru **70**, inclusive, constitute the record on appeal  
in the above entitled proceeding; except for the following  
missing documents:

DATE FILEDBRIEF DESCRIPTION**NONE**

IN TESTIMONY WHEREOF I have caused the seal of the  
said Court to be hereunto affixed, at the City of New York, in  
the Southern District of New York, this **30** day of  
**JANUARY**, in the year of our Lord, one thousand nine hundred  
and seventy **FOUR**, and of the Independence of the United  
States the 198th year.



**Raymond F. Burghardt**  
Clerk of the Court.

71017-41

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

LEON SEGAN,

Plaintiff,

72Civ.1551 JMC  
NOTICE OF APPEAL

-against-

DREYFUS CORPORATION, MARINE MIDLAND BANKS,  
INC., DREYFUS MARINE MIDLAND MANAGEMENT CORP.,  
INTERNATIONAL TELEPHONE AND TELEGRAPH CORP.,  
LAZARD FRERES & CO., HOWARD STEIN, RICHARD A.M.C.  
JOHNSON, JULIAN M. SMERLING, LAWRENCE M. GREENE,  
FELIX G. ROHATYN, ANDRE MEYER, AND THE  
DREYFUS FUND, INC.,

Defendants.

---

Notice is hereby given that LEON SEGAN, plaintiff above named,  
hereby appeals to the United States Court of Appeals for the Second  
Circuit from the order requiring a more definite statement filed in  
this action on May 11, 1973 and from the order striking the complaint  
and dismissing the action without prejudice filed on October 25, 1973.

November 21, 1973.

KAPLAN KILSHEIMER & FOLEY

By *David E. Foley*  
A member of the firm

Attorneys for Plaintiff  
Office and P.O. Address  
122 East 42nd Street  
New York, New York 10017  
(212) MU 7-1980

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PLAINTIFF'S INTERROGATORIES,

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
LEON SEGAN,

Plaintiff,

72 Civ. 1551

-against-

PLAINTIFFS'  
INTERROGATORIES  
**ENTERED**

DREYFUS CORPORATION, et al.,

FIRST SERIES

Defendants.  
-----X

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, defendants are requested to serve written answers to the following Interrogatories, separately, under oath.

Each defendant is requested to answer each Interrogatory and, if unable to answer all or part of any Interrogatory, to respond thereto as fully as possible and to state the fact of and reason for such inability to respond more fully.

Reference herein to any person, firm or corporation including any of the parties to these actions, includes his or its employees, agents, directors, officers, partners, counsel, accountants and their affiliates.

As used herein, and unless the context otherwise indicates, the following terms have the meaning indicated:

Account	-	A person, firm or corporation for whom defendant Dreyfus-Marine performed investment advisory or management services.
Affiliate	-	In addition to the definition of "affiliated person" in 15 U. S. C. 80a-2(3), the term "affiliate", when used with respect to any business entity, shall mean persons, firms and corporations associated with such business entity as an agent, representative, broker, banker, advisor, manager, joint venturer or wholly or partially owned subsidiary.

## Plaintiff's Interrogatories

- Circumstances - When used with respect to a statement, communication or writing, the term "circumstances" shall mean the identity of the person, firm or corporation by whom and to whom such statement, communication or writing was made or transmitted and the identity of the place of, the time of and each person present at each such occurrence.
- Draft - The final draft of a writing and any earlier, preliminary, preparatory and/or tentative draft of all or part of a writing whether or not superceded by a later draft and whether or not the terms of the draft are the same as, or different from the terms of the final writing.
- Dreyfus Corp. - The defendant Dreyfus Corporation.
- Dreyfus-Marine - The joint venture of defendants Dreyfus Corp and Marine Midland Banks Inc., which at a point in time, became known as Dreyfus Marine Midland Management Corp.
- Dreyfus Sale - The sale purportedly made of ITT securities by Mediobanca to Dreyfus Fund between August, 1970 and July, 1971.
- Hartford - Hartford Fire Insurance Co.
- I.R.S. - The Internal Revenue Service.
- I.T.T. - Defendant International Telephone and Telegraph Corp.
- I.T.T. Assets - Any and all assets and funds, including pension funds, which were, in whole or in part, owned, controlled or subject to the influence of defendant I.T.T.
- I.T.T.- Hartford Merger - The merger or other combination, whether contemplated, proposed, agreed to or consummated, between Hartford and defendant I.T.T.
- Identify and Describe - (a) When referring to a writing (other than an agreement), means a request to state the type of writing (e.g., letter, memorandum, minutes, etc.), the date of the writing, the present location and custodian of such writing and every copy thereof, together with a request to identify and describe the author, sender and every recipient of such writing or of a copy thereof.



## Plaintiff's Interrogatories

(b) When referring to an agreement, means a request to state the date of such agreement as shown therein, the date the agreement was actually entered into, its effective date, the name of each party thereto, the date of its termination, the date of every amendment or modification thereof, the present location and custodian of such agreement, of its amendments and modification, and of every copy thereof, together with a request to identify and describe each person who signed such agreement on behalf of each party thereto.

(c) When referring to a person, means a request to state his or its name and present business and residence addresses and his or its relation, during the last five years, to any of the parties to this action (e.g., as director, officer, partner, employee, agent, counsel or accountant).

Joint Venture	-	See "Dreyfus-Marine", supra.
Lazard Freres	-	Defendant Lazard Freres & Co.
Mediobanca	-	Mediobanca Banca di Credito Finanziario - Societa Per Azioni, of Milan, Italy.
Mediobanca Sale	-	The purported sale of Hartford securities to Mediobanca by defendant I.T.T.
New I.T.T. Securities	-	The shares of its stock issued by defendant I.T.T. to stockholders of Hartford in exchange for their Hartford securities following the I.T.T. - Hartford merger.
Prospect	-	A person, firm or corporation for whom defendant Dreyfus-Marine offered or contemplated or considered offering to perform services or w. respect to whom there occurred any discussion, negotiations, solicitations or inquiries which concerned the possibility that defendant Dreyfus-Marine might furnish such services.

## Plaintiff's Interrogatories

- Proxy Material - All writings issued to Dreyfus Fund shareholders in connection with consideration or action to be taken upon the approval or rejection of each and every one of Dreyfus Fund's advisory and/or management agreements and/or the renewal or extension thereof; and All writings issued to Dreyfus Fund shareholders and/or stockholders of Dreyfus Corp. and/or stockholders of Marine Midland Banks, Inc. in connection with Dreyfus-Marine
- Record - See "Writings", infra.
- S. E. C. - The Securities and Exchange Commission
- S. E. C. Action - The action for an injunction filed in the United States District Court for the Southern District of New York on or about June 16, 1972, identified by Index No. 72 Civ. 2561.
- S.E.C. Investigation - The proceedings, hearings and investigation which preceded the filing of the S.E.C. Action.
- Writings - The originals, copies and drafts of any written, printed or phonetically recorded matter in the possession, custody or control of any of the defendants or their respective officers, directors, employees, agents, attorneys or accountants, including, but not limited to all of the following: notes, transcripts, letters, telegrams, other communications, memoranda, agreements, minutes and other records of meetings of stockholders, directors and directors' committees, the call of and agenda for any such meeting, financial statements, budgets, studies, reports, opinions, news releases, the text and summary of any lectures, speeches and addresses, statistical data, book entries, accounting and cost records, schedules and work sheets.

Plaintiff's Interrogatories

INTERROGATORIES

1(a) Identify each person who was an officer or director of Dreyfus Fund, Dreyfus Corp. and/or any affiliate or affiliates of Dreyfus Corp., at any time from January 1, 1968, to the date of the answer of this interrogatory, stating the date from which and to which each was a director and/or officer.

(b) With respect to each such person, state each position held with Dreyfus Fund, Dreyfus Corp. and/or any affiliate or affiliates of Dreyfus Corp. and the date from which and to which each such position was held.

(c) With respect to each such person indicate whether he was party to an employment contract with Dreyfus Fund, and if so, identify and describe each such employment contract and all amendments, changes, additions or deletions thereto.

2(a) Identify and describe all writings relating to:

(1) the consideration, recommendation, selection, or nomination of any person for appointment, election or re-election as an officer or director of Dreyfus Fund, Dreyfus Corporation and/or each affiliate thereof from January 1, 1968 to the date of the Answer to this Interrogatory;

(2) the rejection of any person for appointment, election or re-election as an officer or director of Dreyfus Fund, Dreyfus Corporation and/or each affiliate thereof during the said period;

(3) the appointment, election or re-election of any person as an officer or director of Dreyfus Fund, Dreyfus Corporation and/or each affiliate thereof during the said period.

Plaintiff's Interrogatories

(b) Identify each person who prepared each such writing.

3 (a) Identify each committee of the directors and/or officers of Dreyfus Fund, Dreyfus Corporation and/or each affiliate thereof existing at any time from January 1, 1968, to the date of the answer to this interrogatory.

(b) With respect to each such committee, state the period of time during which it was in existence and describe its tasks and functions.

(c) Identify each person who is or was a member of such committee, identify the committee of which he is or was a member, state the dates from which and to which he was such a member, state the basis of and the amount of all compensation which he received for services in connection with duties performed by him as a member of such committee and identify all documents <sup>rel</sup> relating to his appointment to such committee and/or his function or performance thereon.

4 (a) With respect to the period January 1, 1968 to the date of the Answer to this Interrogatory, state separately with respect to all meetings and proceedings of shareholders, officers and/or committees of offices and/or directors of Dreyfus Fund, what records thereof were kept, including without limitation, minutes, transcripts, phonetic recordings, correspondence, memoranda, informal notes, notices of meetings and agenda.

(b) As to each of the records sought in sub-division (a) of this Interrogatory, state whether and in whose custody the same or a copy thereof is now maintained.

(c) As to each of the records sought in sub-division (a)

Plaintiff's Interrogatories

of this Interrogatory which has been destroyed or otherwise disposed of, and/or the original or a copy of which is not now available, state when, where, by whom, at whose direction and under what circumstances each such record was destroyed or disposed of, identify each person who had received a copy thereof prior to such destruction or disposal and each person who had examined such record prior to its destruction or disposal.

5(a) Identify, describe all investment management or advisory agreements between Dreyfus Fund and Dreyfus Corporation and/or any of its affiliates in effect during the period January 1, 1968 to the date of the answer to this Interrogatory.

(b) As to each such agreement state if it has been reinstated, renewed or extended since the date it became effective.

(c) If the answer to Interrogatory 5(b) is in the affirmative, state the date of each such reinstatement, renewal or extension.

(d) Identify each notice or other writing distributed to shareholders of Dreyfus Fund, for the purpose of furnishing them with information respecting, or influencing them in favor of voting for approval, reinstatement, renewal or extension of each such agreement.

6(a) Identify, describe all agreements concerning the purchase and/or sale of Dreyfus Fund Securities between Dreyfus Fund and any defendant herein or any affiliate of any defendant herein, in effect during the period from January 1, 1968 to the date of the answer to this Interrogatory.

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(b) As to each such agreement, state if it has been reinstated, renewed or extended since the date it became effective.

(c) If the answer to interrogatory 6(b) is in the affirmative, state the date of each such reinstatement, renewal or extension.

(d) Identify each notice or other writing distributed to shareholders of Dreyfus Fund, for the purpose of furnishing them with information or influencing them in favor of voting for approval, reinstatement, renewal or extension of each such agreement.

7. Identify each class of Dreyfus Fund shares outstanding during the period from January 1, 1968 to the date of the answer to this Interrogatory, and for each such class describe its designations, preferences and rights.

8(a) Identify each account for whom defendant Dreyfus-Marine has performed services from January 1, 1970 to the date of the answer to this Interrogatory.

(b) As to each such account identify the particular funds and/or assets with respect to which Dreyfus-Marine performed services and describe in detail the services so performed.

(c) As to each such account state the amount and the basis of all compensation paid for the services performed by Dreyfus-Marine.

(d) As to each such account, state the date when, and the person from whom Dreyfus-Marine first learned of the opportunity of furnishing such services for such account and, if such information was acquired in writing, identify and describe each such writing or, if such information was acquired orally, identify and describe the full substance and circumstances thereof.

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(e) Identify and describe each oral and/or written communication to, from or among any of the defendants herein or any of their affiliates, respecting the possibility of and/or the terms and conditions under which services would or might be rendered by Dreyfus-Marine to each such account and as to each such communication that was oral, state the full substance and circumstances thereof.

9 (a) Identify each prospect to whom defendant Dreyfus-Marine offered and/or considered offering its services or to whom, it was suggested, that such services be offered, from January 1, 1970, to the date of the answer to this Interrogatory.

(b) As to each such prospect identify the assets with respect to which Dreyfus-Marine proposed or contemplated performing services.

(c) As to each such prospect state the amount and the basis of all compensation which it was proposed or contemplated would be paid to Dreyfus-Marine for the services to be performed by it.

(d) As to each such prospect, state the date when, and the person from whom, Dreyfus-Marine first learned of the opportunity of furnishing such services for such prospect and, if such information was acquired in writing, identify and describe each such writing or if such information was acquired orally, state the full substance and circumstances thereof.

(e) Identify and describe each writing and/or oral

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communication to, from or among any of the defendants herein or any of their affiliates, respecting the possibility of and/or the terms and conditions under which services would or might be rendered by Dreyfus-Marine to each such prospect and as to each such communication that was oral, state the full substances and circumstances thereof.

10(a) Identify and describe the procedures required by Dreyfus Fund for the accomplishment and the approval or ratification of transactions on its behalf in portfolio securities during the period January 1, 1969 to the date of the answer to this Interrogatory.

(b) Identify each person and/or group of persons who had authority to engage in transactions in portfolio securities on behalf of Dreyfus Fund during the period January 1, 1969 to the date of the answer to this Interrogatory and describe the extent of the authority and any limitations or conditions on the authority of each such person and/or group of persons with respect thereto.

11(a) Identify each transaction or proposed contemplated or suggested transaction in portfolio securities offered to or considered by Dreyfus Fund from January 1, 1969 to the date of the answer to this Interrogatory.

(b) As to each such transaction or proposed, contemplated or considered transaction, state :

(1) the date when and the person from whom Dreyfus Fund first learned of the possibility of effectuating each transaction;



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(2) If Dreyfus Fund acquired such information in writing, identify and describe each such writing;

(3) If Dreyfus Fund acquired such information orally, state the full substance and circumstances of each such communication;

(4) Identify each person, firm and corporation, including but not limited to each defendant herein, each broker or dealer in securities, each investment banker and each officer, director, partner, agent, employee, or affiliate of each of them, who was involved in any way in the proposal and/or consideration of such transaction or proposed, contemplated or considered transaction;

(5) Describe in full the role played by each person, firm or corporation identified in response to interrogatory 11(b)(4);

(6) Identify each and every writing to, from or among those identified in response to interrogatory 11(b)(4) and state who prepared each such writing and when, where, by whom and to whom it was delivered;

(7) Identify and state the full substance and circumstances of each and every oral communication from, to or among those named in response 10 (b)(4);

(8) Identify each and every service or proposed service which it was ever suggested or contemplated that defendant Dreyfus-Marine would or could furnish to any other involved person, firm or corporation or any director, officer, partner, agent, employee, associate or affiliate of such person, firm or corporation involved directly or indirectly in any transaction or any proposed, contemplated or considered transaction identified in response to Interrogatory

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11 (a) hereof;

(9) Identify and describe each and every business relationship existing, which existed or was proposed, contemplated or suggested, on or after January 1, 1969, between each and/or every defendant herein (including their officers, directors, partners, agents, employees, and affiliates) and each and every person, firm or corporation interested in any transaction or proposed, contemplated or suggested transaction identified in response to Interrogatory 11 (a) herein;

(10) Identify and describe each and every benefit or proposed, contemplated or suggested benefit to each person firm or corporation directly or indirectly interested therein, which it was anticipated would or could result from each business relationship or each proposed, contemplated or suggested business relationship, identified in response to interrogatory 11 (b) (9);

(11) Identify and describe the action decided upon and/or taken respecting each and every transaction or proposed, contemplated or suggested transaction referred to in response to Interrogatory 11 (a);

(12) Identify and describe each direct or indirect fee, bonus, commission or other payment made to any person, firm or corporation in connection with any transaction or proposed transaction identified in response to interrogatory 11 (a) and identify and describe fully the services or other consideration for which each such fee, bonus, commission or other payment was given.

12(a) State whether any defendant herein or any officer, director, partner, agent, employee, or affiliate of any defendant herein made, or was furnished with an analysis, study or projection respecting any transaction or proposed contemplated or suggested transaction identified response to Interrogatory 11(a) herein.

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(b) If so, identify each such analysis, study or projection;

(c) As to each such analysis, study or projection:

(1) identify who made and who furnished each such analysis, study or projection;

(2) identify and describe all writings relating to each such analysis, study or projection;

(3) identify any person who prepared each such writing;

(4) identify each person who received such analysis, study or projection or such writing;

(5) As to each such analysis, study or projection made or furnished in oral form, give the full substance and circumstances thereof.

13(a) State the date when, and the source from whom each defendant first learned of the possibility that defendant Dreyfus Corporation and defendant Marine Midland Banks, Inc. might or could join in the venture which became known as the defendant Dreyfus-Marine.

(b) State who on behalf of each defendant first acquired this information.

(c) To the extent that such information was acquired in writing, identify and describe each such writing, identify each person firm and/or corporation involved in the preparation thereof.

(d) To the extent that such information was acquired orally, state the full substance and circumstances thereof.

14(a) Identify and describe all writings concerning the said proposed joint venture of defendant Dreyfus Corporation

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and defendant Marine Midland Banks Inc.

(b) State who prepared each such writing, for whom it was proposed and each person, firm and corporation to whom it was delivered or given.

15(a) State the date that negotiations concerning the proposed joint venture of defendant Dreyfus Corporation and defendant Marine Midland Banks Inc. commenced.

(b) Identify by date, place and persons present, each negotiating session and each meeting or discussion concerning the said proposed joint venture.

(c) Identify the persons, firms and/or corporation on whose behalf each person present at each such negotiating session, meeting or discussion, acted.

(d) Identify and describe all reports or other communications to, from or among any and every defendant herein their officers, directors, partners, agents employees, and/or affiliates, respecting such negotiations, meetings and discussions;

(e) As to all reports or other communications identified in response to Interrogatory 15(d) which were in oral form, give the full substance and circumstances thereof.

16(a) State whether any defendant herein or any officer, director, partner, agent, employee, or affiliate thereof, made, or was furnished with an analysis, study or projection of the business potential and/or prospects of the proposed joint venture of defendant Dreyfus Corporation and defendant Marine Midland Banks Inc. and/or of the efforts which could be employed and/or the sources which might prove useful in the acquisition of business opportunities for the proposed joint venture.

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(b) As to each such analysis, study or projection:

(1) Identify who made and who furnished such analysis, study or projection and each person, firm and corporation to whom it was furnished;

(2) Identify and describe all writings relating to each such analysis, study or projection;

(3) Identify each person who prepared each such analysis study or projection and each such writing;

(4) State the full substance and circumstances of each such analysis, study or projection that was in oral form.

(5) Identify and describe each such analysis, study or projection that was in written form.

17(a) State whether any persons involved in the negotiations or considerations respecting the said propose joint venture of the defendant Dreyfus Corporation and defendant Marine Midland Banks Inc., expressed dissatisfaction therewith or with any of the proposed terms and/or conditions thereof.

(b) If the answer to all or any part of Interrogatory 17(a) is in the affirmative:

(1) Identify each individual who expressed such dissatisfaction;

(2) Insofar as each such statement of dissatisfaction was expressed orally, state the full substance and circumstances thereof;

(3) Insofar as such statement of dissatisfaction was expressed in writing, identify and describe each such writing;

(4) Identify each person who prepared each such writing;

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(5) Insofar as each such statement of dissatisfaction related to a proposed term or condition of the joint venture, identify and describe each proposed term or condition to which dissatisfaction was expressed;

(6) Identify each person, firm or corporation to whom each such statement of dissatisfaction was expressed;

(7) Identify and describe each step or action taken as a consequence of each such statement of dissatisfaction and the results thereof.

18(a) Identify by date, place and persons present, each discussion and/or meeting of officers, directors, committee and/or members thereof of Dreyfus Corp. and/or Marine Midland Banks, Inc. and/or Dreyfus Fund concerning the said proposed joint venture of Dreyfus Corp. and Marine Midland Banks, Inc. or the terms and conditions thereof.

(b) Identify and describe all writings, including minutes, notes, transcripts and synopses, relating to and/or reporting upon each discussion and/or meeting.

(c) Identify each person who prepared such writing.

(d) Identify and describe each oral communication or statement made in the course of each such meeting or discussion, and state the full substance and circumstances thereof.

(e) Identify each such meeting at which a vote was taken.

(f) State the question or questions to be voted upon at each such meeting.

(g) State whether such vote was actually taken at each such meeting.

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(h) Identify each such person who voted if a vote was taken.

(i) State how each such person voted.

19(a) State whether approval was obtained for the said joint venture from the stockholders of Dreyfus Corporation and/or of Marine Midland Banks Inc.

(b) If so, identify and describe all proxy materials, and other writings sent to the said stockholders in connection therewith and each source from which information, used in preparation of such proxy material and other writings was taken.

(c) Identify each person who prepared such proxy materials and writings and of each such source of information used in connection therewith.

20(a) State whether approval of the joint venture was obtained from shareholders of Dreyfus Fund.

(b) If so, identify and describe all proxy materials and other writings sent to the said shareholders in connection therewith and each source from which information, used in the preparation of the said proxy material and other writings was taken.

(c) Identify each person who participated in the preparation of the said proxy materials and writings and of each such source of information used in connection therewith.

21 Identify each person who suggested, supplied, considered or recommended information to be set forth in the said proxy materials and/or other writings and/or drafts thereof referred to in the responses to Interrogatories numbered 19 and 20 hereof.

22(a) Identify and describe all writings concerning meetings of the stockholders of Dreyfus Corporation and/or meetings of the stock-

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holders of Marine Midland Banks Inc. and <sup>or</sup> meetings of shareholders of Dreyfus Fund respecting the proposed joint venture of Dreyfus Corporation and Marine Midland Banks, Inc.

(b) If minutes of the said meetings were taken identify and describe the same.

(c) State the full substance and circumstances of each oral statement or communication and identify and describe each writing to, from or among any defendant herein or any of their officers, directors, partners, agents, employees or affiliates concerning such meetings and/or made in the course thereof which is not identified and described in response to Interrogatory 22(a) or (b) hereof

23(a) State each fact set forth in the proxy materials issued by Dreyfus Corporation, Marine Midland Banks Inc and Dreyfus Fund which was considered by the respective Boards of Directors of the said defendants, in approving and recommending to shareholders the joint venture of Dreyfus Corporation and Marine Midland Banks, Inc.

(b) State each of the other factors considered by the said respective Boards of Directors in approving and recommending to shareholders, the said joint venture.

24. Identify each person who solicited proxies in connection with shareholder meetings of Dreyfus Corporation, Marine <sup>or</sup> Midland Banks Inc. and Dreyfus Fund at which action was taken by the shareholders on approval or rejection of the joint venture of defendant Dreyfus Corporation and defendant Marine Midland Banks, Inc.

25(a) State whether shareholders of Dreyfus Fund were notified at any time by any defendant herein or by anyone acting on behalf of any defendant herein, that they were entitled to any



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financial benefit which resulted from transactions of Dreyfus-Marine with its accounts which had been or were involved in prior or contemporaneous transactions, directly or indirectly, with Dreyfus Fund.

(b) If the answer to Interrogatory 25(a) is in the affirmative, state whether such notice was given to Dreyfus Fund shareholders orally or in writing and,

(1) if any such notice was given in writing, identify and describe each such writing;

(2) identify each person who prepared each such writing;

(3) if such notice was given orally identify the person who gave such notice and the full substance and circumstances thereof.

26(a) State whether any defendant herein received, saw or learned about all or any part of any notice or writing to Dreyfus Fund shareholders respecting the right of such shareholders to any financial benefit which resulted from transactions of Dreyfus-Marine with its accounts, which had been or were involved in prior or contemporaneous transactions, directly or indirectly, with Dreyfus Fund, or, all or any part of any proxy material or other writing issued by Dreyfus Corporation or by Marine Midland Banks, Inc. or by Dreyfus Fund seeking shareholder approval of the joint venture of the Dreyfus Corporation and Marine Midland Banks, Inc.

(b) If the answer to Interrogatory 26(a) is in the affirmative:

(1) identify and describe each such notice or writing or proxy material so received:

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(2) state by whom and from whom it was received;

(3) state the date when it was received;

(4) furnish the full substance and circumstances of each such notice which was in oral form.

(c) Identify describe any and all writings to, from or among any of the defendants herein concerning or referring to any such notice or writing or any such proxy material.

27 Identify and describe each contract or agreement by and/or between any of the defendants herein, respecting the joint venture of defendant Dreyfus Corporation and defendant Marine Midland Banks Inc., and all modifications, changes, additions or amendments thereto.

28(a) State whether there was a formal closing with respect to the agreement of defendant Dreyfus Corporation and defendant Marine Midland Banks Inc., to enter into the joint venture and, if so, state when and where such closing occurred, and identify who was present and in what representative capacity.

(b) Identify all documents examined and/or executed at the closing referred to in Interrogatory 28(a) hereof.

(c) State whether any defendants herein received closing statements or memoranda reflecting what transpired at the said closing and, if so, identify and describe the said closing statements.

29(a) Identify and describe each agreement and/or understanding reached by or among any or all defendants herein, relative to or in consideration of the joint venture of defendant Dreyfus Corporation and defendant Marine Midland Banks, Inc., other than those identified in response to Interrogatories 27 and 28 hereof.

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(b) To the extent that any of the said agreements or understandings were in oral form, state the full substance and circumstances thereof.

30(a) State the date upon which and the State under whose laws defendant Dreyfus-Marine was incorporated.

(b) Identify the incorporators of defendant Dreyfus-Marine.

(e) Identify and describe all papers and other writings filed with any governmental agency, commission or authority respecting the incorporation of defendant Dreyfus-Marine and the commencement of business by the said defendant.

(d) Identify and describe each agreement made between promoters, incorporators and principals preparatory to the formation of Dreyfus-Marine.

31 Identify all officers, directors and committees thereof of defendant Dreyfus-Marine to the date of the answer of this Interrogatory, and describe each business relationship, if any, that each of them had with each of the other defendants herein and/or with the officers, directors, partners, agents, employees, or affiliates of the said other defendants herein, from January 1, 1969 to the date of the answer to this Interrogatory.

32 Identify and describe all payments made and all other benefits given to the date of this Interrogatory, by defendant Dreyfus-Marine, to each of the other defendants herein and/or their officers, directors, partners, agents, employees, or affiliates and state when, where, by whom and to whom each was given and the purpose or reason therefor.

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33(a) Identify each person, firm and corporation who participated or who offered to participate, or who was requested to participate, in any activity relative to the development of the joint venture of Dreyfus Corporation and Marine Midland Banks Inc. and/or in seeking and/or obtaining business opportunities for defendant Dreyfus-Marine.

(b) Describe fully the said participation and/or proposed participation of each such person, firm or corporation.

(c) Identify and describe all communications from, to or among the persons, firms or corporations referred to in Interrogatory 33(a) herein and/or their officers, directors, partners, agents employees and affiliates, relative to the activities referred to in Interrogatory 33(b) herein.

(d) State the full substance and circumstances of each communication described and identified in response to Interrogatory 33(c) hereof, which was in oral form.

34(a) Identify and describe all ITT assets which were the subject of investment management or advisory services furnished by any defendant herein or any officer, director, partner, agent, employee, or affiliate of any defendant herein from January 1, 1968 to the date of the response of this Interrogatory.

(b) Identify and describe each such investment management or advisory service.

(c) State the dates when each of the said investment management or advisory services was furnished and as to each, state who furnished such services and the amount and basis of all consideration paid for each of the said services.

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(d) State whether any of the said services were furnished pursuant to a contract or agreement and, if so, identify and describe each such contract or agreement.

(e) Identify which of the ITT assets were the subject of investment management or advisory services furnished by Dreyfus-Marine.

(f) State who managed the said assets and/or funds prior to Dreyfus-Marine.

(g) Describe why, how, when and by whom the services of the said prior investment manager or adviser were terminated.

(h) Identify and describe each writing and/or communication relative to the termination of the services of the said prior investment manager or adviser and state the full substance and circumstances of all such communications which were in oral form.

35(a) State the date when and the source from which defendant Dreyfus-Marine or anyone acting in its behalf, first learned of the possibility of rendering each of the investment management or advisory services referred to in response to Interrogatory 34 hereof.

(b) State who in each instance, on behalf of defendant Dreyfus-Marine first acquired this information.

(c) To the extent that such information was acquired in writing, identify and describe each such writing.

(d) To the extent that such information was acquired orally, state full substance and circumstances thereof.

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36(a) State the date when, and source from which, defendant ITT or anyone acting on its behalf first learned of the availability of Dreyfus-Marine, to act as investment manager or adviser of assets and/or funds.

(b) State who on behalf of defendant ITT acquired this information.

(c) To the extent of such information was acquired in writing, identify and describe each such writing.

(d) To the extent that such information was acquired orally state the full substance and circumstances thereof.

37(a) As to each occasion when defendant Dreyfus-Marine was chosen to act as investment manager or advisory for ITT assets identify each and every candidate for such appointment.

(b) Identify and describe each communication or proposal from or to Dreyfus-Marine and each of the said competitors relevant to services offered, fees and other expenses charged and all other matters relating to the said investment management advisory position.

(c) Identify the persons who were authorized and empowered to select and/or to appraise the qualifications of the candidates for appointment as such investment manager or adviser and describe fully the procedures employed in the course of considering the said candidates and making the selection and appointment.

(d) Identify by time, place and persons present, each meeting of the individuals referred to in Interrogatory 37(c) hereof, for the purpose of considering the selecting of an investment manager or adviser from among Dreyfus-Marine and the candidates referred to in Interrogatory 37(a) hereof.

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(e) Identify and describe each factor considered by the individuals referred to in Interrogatory 37(c) hereof, when they were selecting or considering investment managers or advisers from among Dreyfus-Marine and the candidates referred to in Interrogatory 37(a) hereof.

(f) Identify and describe all written communications and state the full substance and circumstances of all oral communications to, from and among the individuals referred to in Interrogatory 37(c) hereof, relative to the choosing of an investment manager or adviser from among Dreyfus-Marine and the competitors referred to in Interrogatory 37(a) hereof.

(g) State whether the individuals referred to in Interrogatory 37(e) hereof had available to them any analysis, study, appraisal or report of the relative abilities and reputations of the candidates referred to in Interrogatory 37(a) hereof, to perform services as investment managers and/or adviser and, if so, identify and describe each such analysis, study, appraisal and report.

(h) Identify and describe all writings relating to and/or reports upon each discussion and/or meeting of the individuals referred to in Interrogatory 37(e) hereof relative to the selection of an investment manager or advisor from among Dreyfus-Marine and the other candidates referred to in Interrogatory 37(a).

(i) Identify each person who prepared each such writing.

(j) State the full substance and circumstances of each oral communication or statement made in the course of each such meeting or discussion.

(k) Identify each such meeting at which a vote was taken, proposed or considered.

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(l) State the question or questions to be voted upon at each such meeting.

(m) State whether each such vote was actually taken.

(n) Identify each such person who voted, if a vote was taken.

(o) State how each such person voted.

(p) State whether, with respect to each such meeting, records thereof were kept including, without limitation, minutes, transcripts, phonetic recordings, correspondence, memoranda, informal notes, notices of meetings and agenda, and if so, identify and describe each such record.

38(a) State whether any person or persons involved in the selection and/or appointment of Dreyfus-Marine as investment adviser and/or manager of ITT assets expressed dissatisfaction with such selection and/or appointment or with any of the proposed and/or accepted terms and/or conditions thereof.

(b) If the answer to all or any part of Interrogatory 38(a) is in the affirmative:

1) Identify each individual who expressed such dissatisfaction;

2) State the full substance and circumstances of each such statement of dissatisfaction which was made orally;

3) Identify and describe each writing respecting such dissatisfaction;



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4) Identify the person or persons who prepared each such writing;

5) Insofar as each such statement of dissatisfaction related to a proposed term or condition of such appointment, identify and describe each proposed term or condition to which dissatisfaction was expressed;

6) Identify each person, firm and corporation to whom each such statement of dissatisfaction was expressed;

7) Identify and describe each step or action taken as a consequence of each such statement of dissatisfaction and the results thereof.

39(a) Identify and describe each investment management or advisory contract entered into between Dreyfus-Marine and persons authorized to act with respect to any ITT assets.

(b) State whether there was a formal closing of each or any such contract.

(c) If so, identify <sup>and describe</sup> all documents examined and/or executed at each of the said closings.

(d) If a closing memorandum or statement was prepared <sup>any</sup> relative to such contracts, identify, describe and state who prepared each such closing memorandum or statement.

(e) Identify and describe all other understandings and agreements entered into between Dreyfus-Marine, its officers, directors, agents, employees or affiliates with any other party interested and involved in the said ITT assets other than the contracts and other documents previously identified in response to this Interrogatory and to the extent that each such understanding or agreement was in oral form, state the full substance and circumstances thereof.

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40(a) Identify each person, firm and corporation, involved in any way in the selection or appointment of Dreyfus-Marine as investment adviser and/or manager of any ITT assets, who had anything whatever to do with:

- (1) the merger of ITT and Hartford;
- (2) dealings or negotiations with IRS respecting the said merger;
- (3) the purported sale by ITT of Hartford stock pursuant to an understanding reached with IRS respecting the said merger; or
- (4) any transactions with Dreyfus Fund or with any of its officers, directors, agents, employees or affiliates.

(b) Describe fully the activity of each such person, firm and corporation respecting:

(1) events leading to the selection of Dreyfus-Marine Midland Management Corp. as investment manager adviser of ITT assets;

- (2) the merger of ITT with Hartford ;
- (3) dealings with IRS relative to the said merger;
- (4) the sale by ITT of Hartford stock pursuant to an understanding reached with IRS relevant to the said merger;
- (5) each transaction involving Dreyfus Fund or any of its officers, directors, agents, employees or affiliates.

41 Identify and describe each of the transactions involving defendant Dreyfus Fund referred to in Interrogatory 40(a) and 40(b) (5).

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42(a) Describe the progress and status of merger negotiations respecting the proposed ITT-Hartford merger up to the time when it was first suggested that an opinion or other communication be obtained from the IRS concerning the said proposed merger.

(b) Identify all persons, firms and corporations participating in or involved in any way with the said proposed merger at that time and identify the representative capacity in which each such person, firm and corporation functioned.

(c) state who first suggested or mentioned the need or desirability of communicating with IRS respecting the ITT-Hartford merger and describe the manner in which and the circumstances under which this occurred.

(d) identify and describe all communications and writings from, to and/or among persons, firms and/or corporations participating in the proposed ITT -<sup>Hartford</sup> merger respecting tax consequences of the said merger.

(e) give the full substance and circumstances of each of the communications referred to in Interrogatory 42(d) hereof which was in oral form.

(f) identify and describe, in terms of time, place and circumstances, the persons involved and the substance of what was said and the details that transpired, all meetings and discussions among any of those participating in or involved in the proposed ITT - Hartford merger or any of their representatives, respecting the need for and/or the contents of and/or the position to be adopted in communications and/or negotiations with IRS.

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(g) State the full substance and circumstances of all oral statements made during, and all oral communications made respecting any of the meetings and/or discussions referred to in Interrogatory 42(f) and identify and describe each such statement and/or communication made in writing.

(h) Identify each person, firm and corporation who participated in or was involved in dealings of any nature with IRS respecting the proposed ITT-Hartford merger and describe what was said and done by each said person, firm or corporation and identify the representational capacity in which each such person, firm and corporation functioned.

(i) Identify and describe all communications and writings sent to and/or received from IRS or any representative thereof respecting the proposed ITT-Hartford merger.

(j) Identify and describe in terms of time, place and circumstances, the persons involved and the details of what was said and what transpired, each separate meeting, discussion and negotiation with IRS or any representative thereof respecting the proposed ITT-Hartford merger.

(k) Identify and describe, all writings respecting or reporting upon each and every meeting, discussion and/or negotiation referred to in Interrogatory 42(j) heretofore and identify, describe and give the full substance and circumstances of all oral statements made respecting or reporting upon each such meeting discussion and/or negotiation.

(l) Identify and describe, in terms of time, place, circumstances, the persons present and/or involved and the details of what was said and what transpired, each separate meeting and discussion among any of those participating in or involved in the proposed ITT-Hartford merger or any of their representatives, respecting the progress of, developments during or results of each of the meetings, discussions and/or negotiations referred to

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in Interrogatory 42(j) hercof.

(m) Identify and describe each decision reached and each step or action taken or decided upon during, at the conclusion of or in consequence of each meeting and/or discussion referred to in Interrogatory 42(1) and describe when, how and by whom each such decision, step and/or action was effectuated.

(n) Identify and describe all writings, respecting each meeting and/or discussion referred to in Interrogatory 42(1) hereof and give the full substance and circumstances of all oral statements made respecting or reporting upon each such meeting and/or discussion.

(o) Identify and describe each understanding and/or agreement reached with IRS respecting the ITT-Hartford merger, and state when, where, by whom and in whose presence each was made and if oral state the full substance and circumstances thereof.

(p) Identify and describe each understanding and/or agreement other than those referred to in Interrogatory 42(o), which was proposed, offered or considered in the course of meetings, discussions or negotiations with IRS respecting the ITT-Hartford merger and state when, by whom and to whom each was proposed, by whom and on what basis each was accepted or objected to or rejected, as the case may be and, if oral, state the full substance and circumstances thereof.

(q) describe when, how and by whom each understanding and/or agreement referred to in Interrogatory 42(o), was complied with and, identify and describe all writings prepared respecting such compliance and state when, where, by whom and for whom each was prepared and to whom communicated or given and state the full substance and circumstances each oral statement or communication made with respect to such compliance.

Plaintiff's Interrogatories

43(a) State whether, as a result of agreements and/or understandings with IRS respecting the proposed ITT-Hartford merger, ITT undertook to dispose of securities of any corporation.

(b) Identify the corporations whose securities ITT thus undertook to dispose of and state the number, type and class of shares of each such corporation involved.

(c) State in whose name each of the said shares was registered at the time when the decision was made to dispose of the same.

(d) State when, to whom, in what manner and for what consideration each of the said shares was disposed of.

44(a) Identify each person, firm and corporation who <sup>in</sup> assisted/or assumed responsibility for disposing of the securities referred to in Interrogatory 43.

(b) State when, where and by whom each such person, firm or corporation was requested or directed and/or when, where and to whom each such person or firm or corporation offered, to aid in the disposing of the said shares and identify and describe all writings with respect thereto and state the full substance and circumstances of all oral communications with respect thereto.

(c) Describe fully all activities of defendant Lazard Freres with respect to the disposition of the said securities and identify each person firm or corporation who, with respect thereto:

(1) acted on behalf of Lazard Freres

(2) communicated with Lazard Freres

45(a) Identify each potential or prospective purchaser considered, or concerning whom inquiries or solicitations were made, with the respect to the sale of the securities referred to in Interrogatory 43 hereof.

Plaintiff's Interrogatories

(b) Identify and describe in terms of time, place, persons present, what was said and what transpired, in all meetings, discussions and communications concerning the possibility of selling the said securities to each person, firm or corporation referred to in Interrogatory 45(a) hereof.

(c) Identify and describe all writings and state the full substance and circumstances of all oral communications or statements respecting each meeting, discussion and communication referred to in Interrogatory 45(b) hereof.

46 State whether some of the securities referred to in Interrogatory 43(b) hereof were sold to Mediobanca and, if so, identify the said securities and give the date of the said sale.

47(a) Identify who first mentioned or suggested to each of the defendants herein and their respective representatives, the fact that Mediobanca might be a prospective or potential buyer of any of the securities referred to in Interrogatory 43(b) hereof.

(b) State when, where, by whom, to whom and in whose presence each such event occurred.

(c) Identify and describe all writings from, to or among each or any of the defendants herein, Mediobanca and/or their respective officers, directors, partners, employees, representatives or affiliates respecting the events referred to in Interrogatories 47(a) and (b) hereof and give the full substance and circumstances of all oral statements and communications made in connection therewith.

48(a) Identify who first mentioned or suggested, to each defendant herein, to Mediobanca and to their respective representatives, the fact that ITT might be a prospective or potential seller of any of the securities referred to in Interrogatory 43(b) hereof.

Plaintiff's Interrogatories

(b) State when, where, by whom to whom and in whose presence each such event occurred.

(c) Identify and describe all writings to, from or among Mediobanca, the defendants herein and/or their respective officers, directors, partners, employees, representatives or affiliates respecting the events referred to in Interrogatory 48(a) and (b) hereof and give the full substance and circumstances of all oral statements and communications made in connection therewith.

49(a) As between ITT and Mediobanca and their respective representatives, who initiated discussions solicitations, inquiries and/or negotiations respecting the sale of the securities referred to in Interrogatory 43(b) thereof.

(b) State when, by whom, to whom and in whose presence this occurred.

(c) Identify and describe all writings and state the full substance and circumstances of all oral statements to, from or among each of the defendants herein, Mediobanca and/or their respective officers, directors, partners employees, representatives and/or affiliates respecting the events referred to in Interrogatories 49(a) and (b) hereof.

50 Identify and describe all writings and furnish the full substance and circumstances of all oral communications and statements, by, from, to or among any and all defendants herein, Mediobanca, and officers, directors, partners, employees, representatives and affiliates concerning the Mediobanca Sale.

51(a) Identify and describe all meetings, discussions, communications and negotiations which led to Mediobanca Sale.



Plaintiff's Interrogatories

(b) Identify each person, firm and corporation and the representatives thereof, who or which participated in each such meeting discussion, communication or negotiation and identify the representational capacity of each individual involved.

(c) Describe what transpired and occurred at and during each such meeting, discussion, communication and negotiation and what actions, steps and/or decisions were made or taken as a result or consequence thereof.

(d) Identify describe and give the full substance and circumstances of each oral statement or communications made during and/or made concerning each such meeting, discussion, communication and negotiation.

(e) Identify and describe each writing, including, without limitation, transcripts, minutes, notes, memoranda, communications, reports, studies and analyses, made and/or drafted, respecting each such meeting, discussion, communication and negotiation.

52(a) Identify each person, firm and corporation and their respective representatives who participated in and/or was an intermediary respecting the negotiations and/or agreements which led to the Mediobanca Sale.

(b) With respect to each person, firm, corporation and representative referred to in Interrogatory 52(a) hereof, describe fully their activities, if any, respecting:

- 1) the ITT - Hartford merger;
- 2) the negotiations, discussions, meetings, understandings and/or agreements with IRS or its representatives respecting the ITT-Hartford merger;

Plaintiff's Interrogatories

3) any events leading to the retention of Dreyfus-Marine as an investment manager or advisor for ITT assets

4) any transaction which involved defendant Dreyfus Fund.

53 State where and when the Mediobanca Sale was closed, who was present and in what representational capacity and identify and describe all documents and writings examined and/or executed at the said closing and statements and/or memoranda prepared by or furnished to each defendant herein in consequence thereof.

54 Identify and describe all understandings and agreements reached with respect to or in the course or arriving at the Mediobanca Sale, other than those referred to in Interrogatory 53 hereof and identify and describe all writings and state the full substance and circumstances of all oral statements and communications with respect thereto.

55(a) With respect to the Mediobanca Sale, state when, where and in what form or manner payment was received by the seller.

(b) Identify and describe each receipt and/or other acknowledgement which was given for such payment.

(c) If such payment was made by check, identify and describe each such check.

(d) State whether each such payment was absolute and unconditional and, if not, identify and describe all the conditions to which each such payment was subject.

(e) State whether all or any part of the funds with which each such payment was made, were made available for immediate, free, unconditional and unencumbered use at the sole discretion of the seller, and if not, state why not and identify the

Plaintiff's Interrogatories

describe each condition, encumbrance and impediment affecting such use and state when and under what circumstances each of those conditions, encumbrances and impediments terminated.

(f) State whether, after the Mediobanca Sale, any consideration received or receivable by the seller remained or was deposited in the custody of any financial or banking institution affiliated with the buyer or was held in any financial or banking institution in escrow or subject to any instruction from the buyer.

(g) If the answer to the interrogatory 55(f) is in the affirmative, identify each such financial or banking institution and the particular funds held and state when and under what circumstances and/or conditions such funds were so held and identify and describe all writings and state the full substance and circumstances of all oral statements or communications with respect thereto.

56(a) Identify and describe all payments or other benefits including, without limitation, commissions and bonuses, paid or given to each person, firm or corporation for assistance in accomplishing the Mediobanca Sale and state when, where by whom, to whom and in what form each such payment or benefit was made or given.

(b) State whether any bills or claims were rendered or made, formally or informally, to any defendant herein for services performed or allegedly performed respecting the sale of any of the securities referred to in Interrogatory 43(b) hereof, or to any purchaser of such securities, and, if so, identify and describe each such bill and/or claim and state when, where, by whom, to whom, in whose presence and in what manner and form each was rendered or made, together with the response thereto, and

Plaintiff's Interrogatories

all  
identify and describe/writings and state the full substance  
and circumstances of all oral statements and communications  
with respect thereto.

57(a) State whether, in addition to payments and/or  
benefits identified in response to Interrogatory 56(a) heretofore,  
any person, from or corporation had or claimed the right to re-  
ceive or did receive any further payment or benefit in any form  
from any source respecting the securities which were the subject  
of the Mediobanca Sale and, if so, state where, when and under  
what circumstances each such payment or benefit or the right  
or claim thereto arose and whether, when, by whom, to whom  
and in what manner and form the same was paid and identify each  
person, firm and corporation involved.

(b) State whether, as to each payment and/or benefit  
and each right or claim thereto identified in response to Interroga-  
tory 56(a) and (b) and Interrogatory 57(a) the person, firm or  
corporation who received, or claimed/ or was entitled thereto gave  
notice or information thereof to any defendant herein and, if so,  
state when, where, by whom, to whom and in whose presence each such  
notice or information was given and identify and describe all  
and circumstances  
writings and state the full substance/of all oral statements or  
communication with respect thereto.

58(a) State whether, at or pursuant to the Mediobanca  
Sale, the certificates representing the securities sold were delivered  
to Mediobanca or its representatives and, if so, state precisely  
when, where, by whom and to whom this delivery was made.

(b) If the said certificates were not delivered to  
Mediobanca directly, state why they were not and identify to whom  
they were delivered and identify and describe all writings and  
state the full substance and circumstances of all oral communications  
with respect thereto.

Plaintiff's Interrogatories

59(a) State whether, following the Mediobanca Sale, the corporate record ownership of the sold securities was transferred to the name of Mediobanca and if not, state whether any such transfer, to any name, was made and, if so, when and into whose name such transfer was made.

(b) If the said securities were transferred into the name of Mediobanca, state when this occurred.

(c) If the said securities were not transferred into the name of Mediobanca, state why not and identify and describe all writings and state the full substance and circumstances of all oral statements and communications with respect thereto.

60(a) State whether, after the Mediobanca Sale, any dividends were paid on the sold securities and when such dividends were paid.

(b) If any such dividends were not paid directly to Mediobanca, state why not and identify to whom they were paid and identify and described all writings and state the full substance and circumstances of all oral statements and communications, with respect thereto.

(c) If any such dividends were paid to any agent or representative of Mediobanca or to any broker or dealer in securities or to any investment manager, adviser or banker, state why and when each such payment was made to each such party and state whether, where, by whom and in what manner and form the amount or value thereof was forwarded to Mediobanca and identify and describe all writings and state the full substance and circumstances of all oral statements and communications with respect thereto.

61 State whether, after the Mediobanca Sale, any or all of the sold securities were exchanged for the securities of TTT and, if so, state the date when the securities were exchanged.

Plaintiff's Interrogatories

ITT securities were obtained in such exchange (hereinafter the "new ITT securities") and identify and describe all writings and state the full substance and circumstances of all oral communications and statements with respect thereto.

62(a) State whether the new ITT securities were delivered to Mediobanca or its representatives and, if so, state precisely when, where by whom and to whom such delivery was made.

(b) If the said new ITT securities were not delivered to Mediobanca directly, state why they were not and state to whom they were delivered and identify and describe all writings and state the full substance and circumstances of all oral communications and statements made with respect thereto.

63 State whether the new ITT securities were registered in the name of Mediobanca, and if so, state when this occurred, or if not, state why not and identify the name from which and to or in which they were registered and/or transferred and identify and describe all writings and state the full substance and circumstances of all oral communications and statements made with respect thereto.

64(a) State whether dividends were paid on the said new ITT securities and if so, when, to whom and in what manner and form each of the said dividends was paid and the amount thereof.

(b) If any such dividends were not paid directly to Mediobanca, state why not, identify to whom they were paid and identify and describe all writings and state the full substance and circumstances of all oral communications and statements made with respect thereto.

(c) If any such dividends were paid to any agent or representative of Mediobanca or to any broker or dealer in securities or to any investment manager or adviser or banker state when and why each such payment was made to such party and state

Plaintiff's Interrogatories

whether, when, by whom, to whom and in what manner and form the amount and/or value thereof was forwarded to Mediobanca and identify and describe all writing and state the full substance and circumstances of all oral communications and statements made with respect thereto.

65(a) State whether, subsequent to the Mediobanca Sale, any of the securities purchased in the Mediobanca Sale, or securities obtained from ITT in exchange therefor, were sold by Mediobanca.

(b) If so, identify the securities involved and state when, to whom and at what price each such resale occurred.

(c) Identify each person, firm and corporation who or which participated in or received any portion of the proceeds of each such resale, or received any payment or benefit in connection therewith or as a result thereof, state the amount, source, reason and date of each such payment or benefit and identify and describe all writings and state the full substance and circumstances of all oral statements and communications made with respect thereto.

66 State when, from whom and in what manner, each of the defendants herein and/or their respective representatives, first became aware that Mediobanca would or might be willing to sell the securities referred to in Interrogatory 65(b) hereof and identify and describe all writings and state the full substance and circumstances of all oral statements and communications made with respect thereto.

Plaintiff's Interrogatories

67(a) State who was asked, by whom, and who suggested and/or offered, to aid in obtaining a buyer for Mediobanca in the resale of the securities referred to in Interrogatory 65(b) hereof, and identify and describe all writings and state the full substance and circumstances or all oral communications and statements made with respect thereto.

(b) State what was done by each such person, firm and corporation, referred to in Interrogatory 67(a), in furtherance or in aid of or as assistance in obtaining a buyer for the said securities and identify and describe all writings and state the full substance and circumstances of all oral statements and communications with respect thereto.

68 Identify each potential or prospective buyer from Mediobanca of the securities referred to in Interrogatory 65(b) hereof, who was suggested or considered or with respect to whom inquiries or solicitations were made respecting the sale of the said securities and state who was involved in each such suggestion, consideration, inquiry and solicitation and identify and describe all writings and state the full substance and circumstances of all oral statements and communications with respect thereto.

69(a) Identify who first mentioned or suggested Dreyfus Fund as a prospective or potential buyer of any of the securities referred to in Interrogatory 65(b) hereof and state when, where, to whom in whose presence and under what circumstances this occurred.

(b) Identify and describe all writings and state the full substance and circumstances of all oral statements and communications with respect thereto.

70(a) Identify who first mentioned or suggested Mediobanca to each of the defendants herein or their representatives, as a prospective or potential seller of any of the securities referred to



Plaintiff's Interrogatories

in Interrogatory 65(b) hereof and state when, where, to whom, in whose presence and under what circumstances this occurred.

(b) Identify and describe all writings and state the full substance and circumstances of all oral statements and communications with respect thereto.

71 As between Mediobanca and the Dreyfus Fund and their respective representatives, identify who initiated discussions with respect to the sale of any of the securities referred to in Interrogatory 65(b) hereof (hereinafter the "Dreyfus Sale".)

72 Identify and describe all writings to, from or among any and all defendants herein, Mediobanca, and/or their respective representatives, respecting the Dreyfus Sale.

73(a) Identify and describe all meetings, discussions, communications and negotiations which led to the Dreyfus Sale.

(b) Identify each person, firm and corporation, and the representatives thereof, who or which participated in each such meeting, discussion, communication or negotiation and identify the representational capacity in which each such person, firm and/or corporation functioned.

(c) Describe what transpired and occurred at and during each such meeting, discussion, communication and/or negotiation and what actions, steps and/or decisions were made or taken as a result or consequence thereof.

(d) Identify, describe and give the full substance and circumstances of each oral statement made during or made concerning each such meeting, discussion, communication and/or negotiation.

Plaintiff's Interrogatories

(e) Identify and describe each writing, including, without limitation, minutes, notes, memoranda, communications, reports, studies and analyses, made or drafted respecting each such meeting, discussion, communication and/or negotiation.

74(a) Identify each person, firm and corporation and their respective representatives, who participated in, or were intermediaries respecting, any of the negotiations and/or agreements which led to the Dreyfus Sale.

(b) With respect to each person, firm, corporation and representative referred to in Interrogatory 74(a) hereof, describe fully their activities respecting:

- (1) The ITT-Hartford merger;
- (2) Negotiations, discussions, meetings, understandings and/or agreements with IRS or its representatives with respect to the ITT-Hartford merger;
- (3) Any events leading to the retention of Dreyfus-Marine as an investment manager or advisor for ITT assets.
- (4) Any events leading to the Mediobanca Sale;
- (5) Each and every transaction involving Dreyfus Fund.

75(a) State where and when the Dreyfus Sale was closed, who was present and in what representational capacity.

(b) Identify and describe all writings examined and/or executed at the said closing and all closing statements and/or memoranda furnished to any defendant herein in consequence thereof.

76 Identify and describe all contracts, understandings agreements and statements of intent reached with respect to the Dreyfus Sale and/or in the process of accomplishing the said sale and to the extent that all or any part thereof were oral give the full substance and circumstances thereof.

Plaintiff's Interrogatories

77(a) With respect to the Dreyfus Sale, state when, where and in what form or manner payment was received by the seller.

(b) State whether a receipt or other acknowledgment was given for any such payment and, if so, identify and describe each such receipt and acknowledgment.

(c) State whether any such payment was made by check, and, if so, identify and describe each such check.

(d) State whether each such payment was absolute and unconditional and, if not, identify and describe all conditions to which each such payment was subject.

(e) State whether, upon delivery, all or any part of the said payments was not available for immediate, free, unconditional and unencumbered use at the sole discretion of the seller and, if not, state why not and identify and describe each condition, encumbrance and/or impediment affecting such use and state when and under what circumstances each such condition, encumbrance and impediment terminated.

(f) State whether, after the Dreyfus Sale, any of the consideration received or receivable by the seller, remained or was deposited in the custody of any financial or banking institution affiliated with Mediobanca or with any defendant herein or was held by any financial or banking institution in escrow or subject to any instructions from Mediobanca or any defendant herein.

(g) If the answer to 77(f) is in the affirmative, identify each such financial or banking institution and the particular funds so held and state when and under what circumstances and conditions such funds were so held and identify and describe all writings and state the full substance and circumstances of all oral statements and communications made with respect thereto.

Plaintiff's Interrogatories

78(a) Identify and describe all payments and/or benefits, including, without limitation, commissions and bonuses, paid or given to each person, firm and corporation for assistance in accomplishing the Dreyfus Sale, and state when, by whom, to whom and in what form and manner each such payment was made.

(b) State whether any bills or claims were rendered or made, formally or informally, to any defendant herein or to Mediobanca, for services performed or allegedly performed respecting the sale of the securities which were the subject of the Dreyfus Sale and, if so, identify and describe each such bill and claim and state when, where, by whom, to whom and in whose presence each was rendered or made, together with the response thereto, and identify and describe all writings and state the full substance and circumstances of all oral statements and communications made with respect thereto.

79(a) State whether, at or subsequent to the Dreyfus Sale, the certificates representing the securities sold were delivered to Dreyfus Fund or its representatives and state precisely when, where, by whom and to whom such delivery was made.

(b) If the said certificates were not delivered to Dreyfus Fund directly, state why they were not and when and to whom they were delivered and identify and describe all writings and state the full substance and circumstances of all oral statements and communications made with respect thereto.

80(a) State whether, following the Dreyfus Sale, the registration of the sold securities was transferred to the name of Dreyfus Fund, and if not, state whether any such transfer was made and, if so, into whose name.

Plaintiff's Interrogatories

(b) If the registration of said securities was transferred, state when this occurred.

(c) If the said securities were not transferred directly into the name of Dreyfus Fund, state why they were not and identify and describe all writings and state the full substance and circumstances of all oral statements and communications made with respect thereto.

81(a) State whether, after the Dreyfus Sale, any dividends were paid on the said sold securities and if so, when and to whom each such dividend was paid.

(b) If any such dividends were not paid directly to Dreyfus Fund, state why they were not and identify to whom they were paid and identify and describe all writings and state the full substance and circumstances of all oral statements and communications made with respect thereto.

(c) If any such dividends were paid to an agent or representative of Dreyfus Fund or to any broker or dealer in securities or to any investment manager or adviser or banker, identify the recipient thereof, state why each such payment was made to such party and state whether, when, by whom and what manner and form the amount or value thereof was forwarded to Dreyfus Fund and identify and describe all writings and state the full substance and circumstances of all oral statements and communications made with respect thereto.

82(a) State whether, after the Dreyfus Sale, the securities purchased at the said sale were resold by Dreyfus Fund.

(b) If so, state when, to whom and at what price each such resale occurred.

(c) Identify each person, firm and corporation and their respective representatives, who or which participated in the proceeds of each such resale and/or received payment therefrom and state the amount of, and the date of, each such payment.

Plaintiff's Interrogatories

and identify and describe all writings and state the full substance and circumstances of all oral statements and communications made with respect thereto.

(d) Identify by corporation, class and number, the shares so resold.

(e) List the highest and lowest market prices at which shares of the same corporation and class as those referred to in Interrogatory 82(d) hereof, were traded on the dates on which each of the said resales were contracted or, as to each such resale contracted on a date when no such market trades occurred, use the prices on the last date prior thereto on which such trades did occur.

83(a) List the highest and lowest market prices at which Hartford shares of the class which were the subject of the Mediobanca Sale were traded on the date on which the said sale was contracted or if no such trades occurred on that date, then use the prices on the last date prior thereto upon which such trades did occur.

(b) List the highest and lowest market prices at which ITT shares of the same class as the "new ITT securities" were traded on the date or dates on which the said "new ITT securities" were obtained by Mediobanca and if no such trades occurred on any such date then with respect thereto, use the prices on the last date prior thereto upon which such trades did occur.

(c) List the highest and lowest market prices at which ITT shares of the class which were the subject of the Dreyfus Sale were traded on the date on which the said sale was contracted or if no such trades occurred on that date then use the prices on the last date prior thereto upon which such trades did occur.

Plaintiff's Interrogatories

84(a) Identify each directorship, officership and each executive position held by each officer, director and partner of each of the defendants herein and of each affiliate of each defendant herein, at any time between January 1, 1969 and the date of the answer to this Interrogatory, and identify by name and address, each business entity in which such directorship, officership or executive position was held.

(b) Identify and describe each meeting, discussion and communication from January 1, 1969 to the date of the answer to this Interrogatory, by, to and/or among each of the defendants herein, and/or their officers, directors, partners, agents, employees or affiliates, and/or representatives thereof, <sup>the</sup> on/one hand, and each of the business entities referred to in Interrogatory 84(a) hereof or officers, directors, partners, agents, employees, affiliates, or representatives thereof concerning any transaction or contemplated transaction with: Dreyfus-Marine, any account or prospect of Dreyfus-Marine, Dreyfus Fund, or any of their respective officers, directors, partners, agents, employees, and/or affiliates.

(c) Identify and describe all writings and state the full substance and circumstances of all oral communications and statements made with respect to each of the meetings, discussions and communications referred to in Interrogatory 84(b) hereof.

85(a) State when and to what extent did each defendant herein and each officer, director, partner, agent, employee and/or affiliate of each defendant herein, learn:

(1) that Dreyfus Corporation had an interest in Dreyfus Marine;

Plaintiff's Interrogatories

(2) that Dreyfus Corporation had a fiduciary relationship with Dreyfus Fund.

(b) Identify and describe where, in what manner, by whom on their behalf and from whom was such information acquired by each defendant herein and by each officer, director, partner, agent, employee or affiliate of each defendant herein.

(c) To the extent that such information was acquired, in whole or in part, in writing, identify and describe each such writing and all written communications or statements with respect thereto.

(d) To the extent that such information was acquired, in whole or in part, in oral form, state the full substance and circumstances thereof and of each oral communication or statement made with respect thereto.

86(a) Identify and describe each step, action or inquiry taken or made during the period from January 1, 1968 to the date of the answer to this Interrogatory, by each defendant herein and each officer, director, partner, agent, employee, and affiliate of each defendant herein, in each transaction involving or affecting Dreyfus Corporation and/or Dreyfus Fund or their respective officers, directors, agents, employees, subsidiaries, or affiliates, to ascertain whether any fiduciary obligation or duty owed to Dreyfus Fund was violated in the course of accomplishing such transaction.

(b) Identify and describe when, where and by whom each such step, action or inquiry was taken or made and the consequences and results thereof.

(c) Identify and describe each meeting, conversation discussion or communication which occurred with respect to each such step, action and inquiry.



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Plaintiff's Interrogatories

(d) Identify and describe all writings including correspondence, communications, minutes, notes, memoranda, statements, reports, studies and analyses, concerning each such step, action or inquiry and/or each such meeting, conversation, discussion or communication.

(e) State the full substance and circumstances of each oral statement or communication made with respect to each such step, action or inquiry and/or each such meeting, conversation, discussion or communication.

87(a) State when, from whom and in what manner each defendant herein and each officer, director, partner, agent, employee or representative thereof, first learned of the inquiries and/or investigation of the Securities and Exchange Commission ("S.E.C. Investigation") <sup>which</sup> led to the filing of an action by the S.E.C. in the United States District Court for the Southern District of New York on June 16, 1972, identified by Index No. 72 Civ. 2561 (the "SEC Action").

(b) State when, where, from whom and in what manner Mediobanca first learned of the SEC Investigation and the SEC Action.

88(a) Identify and describe each writing and paper, including, without limitation, those seeking information, evidence, testimony and/or documents, received by or served upon Mediobanca and each defendant herein and each affiliate of each defendant herein and each officer, director, partner, agent, employee <sup>and</sup> or representative thereof, from or on behalf of the SEC with respect to the said SEC Investigation and/or the said SEC Action.

(b) State when, where, by whom and on behalf of whom each such writing and/or paper was received or upon whom it was served.

Plaintiff's Interrogatories

89(a) Identify each person, firm, corporation and each representative thereof who furnished written and/or oral information, evidence, testimony and/or documents to the SEC during the course of the S. E. C. Investigation and as to each such person, firm, corporation and representative, identify, describe and furnish the full substance of all information, evidence, testimony and/or documents so furnished and state when, where, by whom, to whom in whose presence and in what form it was given.

(b) Identify and describe all information, evidence, testimony and/or documents furnished during the course of the SEC Investigation by the persons, firms, corporations and representatives referred to in Interrogatory 89(a), and all writings, including, without limitation, all transcripts, memoranda, notes, communications and reports with respect thereto.

90 Identify and describe all actions and steps taken and all meetings, discussions and negotiations had and all statements, understandings, agreements and communications made, to, from and/or among any persons, firms, corporations, governmental agencies or representatives thereof, in connection with, or in the course of, or in consequence of the S. E. C. Investigation and furnish:

(a) the identity and description of all writings including minutes, notes, memoranda, reports, communications, studies and analyses, with respect thereto;

(b) the full substance and circumstances of all oral statements and communications with respect thereto:

(c) the identification, and description and present location of the transcripts of all testimony given by witnesses to the S.E.C.

Plaintiff's Interrogatories

91(a) With respect to the S.E.C. Investigation and the S.E.C. Action, identify and describe, in terms of the time and place of occurrence and, the identity of all participants and intermediaries and the full substance and circumstances of what transpired, occurred and resulted, all meetings, discussions, communications and negotiations with the S.E.C. or any representative thereof concerning the subject matters of the S.E.C. Investigation and/or the substantive contents of the complaint/ <sup>filed or to be filed in</sup> the S.E.C. Action, and/or the inclusion or exclusion of particular persons, firms and/or corporations as defendants therein and/or the inclusion or exclusion of particular substantive allegations therein and/or the timing of the filing of the S.E.C. Action and/or terms and conditions respecting the filing and entry of a consent decree with respect to the said complaint.

(b) With respect to each such meeting, discussion, communication and negotiation, furnish:

(1) the identify and description of all writings, including minutes, notes, memoranda, reports, communications, studies and analyses with respect thereto;

(2) the full substance and circumstances of all oral statements and communications made with respect thereto.

92 As to each person identified in the answers to these Interrogatories, state his relationship to Dreyfus Fund, Dreyfus <sup>and each of their respective affiliates</sup> Corporation and Dreyfus-Marine/ at all times from January 1, 1969 to the date of the answer to this Interrogatory.

93 State the present or last-known residence address and business address of each person identified in the answers to these Interrogatories except to the extent that such information has been supplied in response to any particular Interrogatory.

Plaintiff's Interrogatories

94 State whether the information furnished in response to the foregoing Interrogatories is within the personal knowledge of the affiant, and if not, or if such information is only to the best of the affiant's knowledge, identify each answer to these Interrogatories which is not within the affiant's personal knowledge, state with particularity the source and basis of affiant's belief that it is true and identify each person to whom the information is a matter of personal knowledge.

Dated: New York, New York  
November 14, 1972

KAPLAN KILSHEIMER & FOLEY

By: 

A Member of the Firm

Attorneys for Plaintiff  
Office & P. O. Address  
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New York, New York 10017  
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TO:

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Lawrence M. Green  
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Attorneys for Defendants  
Lazard, Freres & Co., Felix Rohatyn and  
Andre Meyer  
345 Park Avenue  
New York, New York 10022

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Plaintiff's Interrogatories

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International Telephone and  
Telegraph Corp.  
100 Park Avenue  
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PARTIAL DEPOSITION OF PLAINTIFF  
UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

LEON SEGAN,

Plaintiff,

-against-

DREYFUS CORPORATION, MARINE MIDLAND BANKS,  
INC., DREYFUS MARINE MIDLAND MANAGEMENT  
CORP., INTERNATIONAL TELEPHONE AND  
TELEGRAPH CORP., LAZARD FRERES & CO.,  
HOWARD STEIN, RICHARD A.M.C. JOHNSON,  
JULIAN M. SHERLING, LAWRENCE M. GREENE,  
FELIX G. ROHATYN, ANDRE MEYER, AND  
THE DREYFUS FUND, INC.,

Defendants.

New York, New York  
June 26, 1972 - 2 p.m.

DEPOSITION of the Plaintiff LEON SEGAN taken  
by the Defendants, Lazard Freres & Co., et al, pursuant  
to notice, held at the offices of Messrs. Paul, Weiss,  
Rifkind, Wharton & Garrison, 345 Park Avenue, New York,  
New York 10022, on June 26, 1972, at 2 p.m., before  
Edward A. Barron, a Certified Shorthand Reporter and  
Notary Public of the State of New York.

1 Partial Deposition of Plaintiff

2

2 A p p e a r a n c e s :

3 MESSRS. KAPLAN, KILSHEIMER & FOLEY  
4 Attorneys for Plaintiff  
122 East 42nd Street  
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BY: DERMOTT FOLEY, ESQ.

5 MESSRS. PAUL, WEISS, RIFKIND, WIARTON & GARRISON  
6 Attorneys for Lazard Freres & Co., et al  
345 Park Avenue  
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7 BY: EDWARD N. COSTIKYAN, ESQ. and  
8 ALLYN FOSS, ESQ.

9 MESSRS. ROYALL, KOEGEL & WELLS  
10 Attorneys for Dreyfus Corporation, et al  
200 Park Avenue  
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11 BY: STANLEY GODOFSKY, ESQ. and  
JAMES J. MALONEY, ESQ.

12 COUDERT BROS., ESQS.  
13 Attorneys for Dreyfus Marine Midland Management  
Corp.  
200 Park Avenue  
14 BY: STEPHEN SAYRE SINGER, ESQ.

15 MESSRS. STROOCK & STROOCK & LAVAN  
16 Attorneys for The Dreyfus Fund, Inc.  
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17 BY: GERALD D. FISCHER, ESQ.

18 MESSRS. SULLIVAN & CROMWELL  
19 Attorneys for Marine Midland Banks  
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20 BY: WILLIAM WELLS, ESQ.

21 MESSRS. DAVIS POLK & WARDWELL  
22 Attorneys for I.T.T. Corp.  
1 Chase Manhattan Plaza  
New York, New York  
23 BY: MICHAEL LEISURE, ESQ.

24

25

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1 Partial Deposition of Plaintiff 3

2 L E O N S E G A N , the Plaintiff, called as a  
3 witness by the Defendants Lazard Freres & Co.,  
4 et al, being first duly sworn, testified as  
5 follows:

6 EXAMINATION BY MR. COSTIKYAN:

7 Q Mr. Segan, what is your business or profes-  
8 sion?

9 A I am an attorney.

10 Q Do you specialize in any particular field of  
11 law?

12 A Personal injury, most of my work, and then we  
13 do some other work, other than that.

14 Q Are you a shareholder of the Dreyfus Fund?

15 A Yes.

16 Q When did you acquire your shares in that  
17 corporation and fund?

18 A I can't give you an exact date. It would  
19 probably be sometime in the last 10 years.

20 Q How many shares?

21 A How much I have now?

22 Q Yes.

23 A Approximately 144 shares.

24 Q You said something in the last 10 years?

25 A Yes. I bought it under one of these contract  
plans and was making purchases under this monthly



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Partial Deposition of Plaintiff

Segan

4

1 contract arrangement. That has stopped and now I am  
2 just probably building shares on the investment because  
3 they reinvest my shares.

4 Q You now hold 140 shares?

5 A Approximately 140 shares.

6 THE WITNESS: If you want to leave a line  
7 blank, I will be happy to fill in the deposition with  
8 the exact amount.

9 MR. COSTIKYAN: I would appreciate that.

10 Also, can you find out when you acquired it?

11 THE WITNESS: I will do that for you, too.

12 A

13  
14 Q Mr. Segan, in your complaint, in Paragraph 21-A  
15 and 21-B you describe a transaction in late 1969 in which  
16 IT&T sold 1.7 million shares of Hartford to Mediabank;  
17 when did you first learn of that transaction?

18 MR. FOLEY: For the record, I don't know if  
19 it is perhaps slightly premature, but we may as well  
20 bring it up now.

21 To the extent that a very large part of  
22 Mr. Segan's information about details such as that were  
23 obtained as the result of an investigation which I  
24 personally conducted at his request and as his attorney,  
25 there is probably going to be some problem about

2 confidential relationships and other objections.

3 MR. COSTIKYAN: Well, we will deal with them  
4 when we get to them.

5 Q Can you tell us when you first learned of  
6 that transaction?

7 A I would say that I may have learned of some-  
8 thing that was transpiring sometime in the late winter  
9 of this year or early spring.

10 Q What was the source of your information?

11 A Besides the newspapers, I had some information,  
12 I believe, perhaps, from people I had been speaking with  
13 in the investment business.

14 Q Well, let's start with the newspapers. What  
15 newspaper or newspapers?

16 A The New York Times.

17 Q Do you remember about when you learned of it?

18 A Sometime in March of 1972, I think.

19 Q I show you photostat of an article dated  
20 Sunday, March 26, 1972 and ask you if that is the  
21 original source of your information about that transac-  
22 tion.

23 A I don't know that I can say that that is the  
24 original source of the information but that was one of  
25 the sources of my information.

MR. COSTIKYAN: Let me have that marked as  
SOUTHERN DISTRICT COURT REPORTERS

1 Defendant Lazard Exhibit A for Identification.

2 (Newspaper clipping from The New York Times,  
3 Sunday, March 26, 1972 edition, entitled, "ITT Tax Ruling  
4 Linked to Complex Maneuvering" marked Defendant Lazard  
5 Freres Exhibit A for Identification.)

\*\*\*\*

6 Q You say you may have learned of this transac-  
7 tion prior to reading Defendant Lazard Exhibit A for  
8 Identification?

9 A I cannot tell you whether I learned of this  
10 specific transaction at that time. I do know that I  
11 had been speaking to some people about the performance  
12 of Dreyfus.

13 Q To whom did you speak about the performance of  
14 Dreyfus?

15 A In particular, I can't remember who it was that  
16 I spoke with, but I do know that from time to time I  
17 would talk to some people who would be with some stock  
18 brokerage firms and would ask them what is the problem  
19 with Dreyfus, and I don't know whether I obtained it  
20 from some source who said, "Well, there seems to be  
21 something going on involving the ITT, et cetera," and  
22 then I saw this in the paper, and that's when I spoke  
23 to Mr. Foley and asked him to specifically investigate  
24 the situation.

25 Q Let me go back. Can you identify any of these

1 sources?

2 A I can't specifically.

3 Q Am I correct that the only source that you are  
4 reasonably sure of at this time is Defendant's Exhibit  
5 A for Identification?

6 A I can't say you are correct because I would  
7 have to perhaps give some further thought to whether I  
8 had obtained any particular information about this  
9 Mediabanca situation prior to that date.

10 Q Do you have any files which would indicate  
11 whether you had any earlier sources of information?

12 A None.

13 Q At any rate, at this point you can identify  
14 with particularity no source other than this newspaper  
15 clipping, is that right?

16 A Right.

17 Q Your complaint alleges, in Paragraph 21(b),  
18 that Lazard arranged this transaction; what is the basis  
19 of your information as to Lazard's participation?

20 A I would say probably my attorney's investiga-  
21 tion and, if I can refresh my recollection from the  
22 article itself, whether there is anything in there,  
23 and whatever other information I may have obtained prior  
24 thereto which I can't be specific about now.

25 Q Why don't you read through Exhibit A since we

1 will be going back to it, I think, from time to time, and  
2 then we will resume the questioning.

3 A (Witness complies.)

4 I would say that with regard to the information  
5 contained in the article, I then consulted Mr. Foley and  
6 then he conducted an investigation thereafter and obtained  
7 further information.

8 Q What further information has he obtained and  
9 disclosed to you?

10 MR. FOLEY: I would object to that and direct  
11 the witness not to answer the question.

12 MR. COSTIKYAN: On what ground?

13 MR. FOLEY: On the ground that these were  
14 communications between an attorney and his client. They  
15 are the result of my work product and are therefore  
16 privileged communications.

17 Q Were the communications between you and your  
18 counsel oral or in writing?

19 A Oral.

20 Q Have you discussed what your attorney told you  
21 with any third person other than some other member of  
22 the Kaplan, Kilsheimer & Foley law firm?

23 MR. FOLEY: Another non-lawyer?

24 MR. COSTIKYAN: Anyone other than his counsel.

25 MR. FOLEY: For the record, we are having a

1 delay here to clarify the point that is being raised.  
2

3 There were certain people who made inquiries  
4 but spoke to me rather than to Mr. Segan, and he wanted  
5 to verify with me whether something of that nature  
6 should be included.

b2 6 Q My question is whether or not you disclosed  
7 to any third person the substance of what your attorney  
8 disclosed to you.

9 A No.

10 Q Do you have any documents evidencing Lazard's  
11 participation in the sale to Mediabanca?

12 A My attorney may have it. I don't have any  
13 in my personal possession nor in my files.

14 MR. COSTIKYAN: I suppose I can serve a notice  
15 to produce. Do you have any, Mr. Foley?

16 MR. FOLEY: There are some documents that are  
17 still coming into the office. I will be candid with you.  
18 I am conducting a continued investigation into this  
19 matter and some of those papers seem to indicate a  
20 relationship to Lazard.

21 MR. COSTIKYAN: Can you identify any of the  
22 documents?

23 MR. FOLEY: Not offhand, no. I didn't even  
24 bring any of them with me.

25 Q Do you have any written documents at all --

1 and I am putting the question specifically -- evidencing  
2 Lazard's participation in the sale to Mediabanca of the  
3 Hartford stock?

4 A Are you asking me as to whether I have any in  
5 my personal possession?

6 Q Or whether you know that your attorney has  
7 any in his possession, any documents relating to that  
8 subject.

9 A From the information that has been conveyed  
10 to me by my attorney, he apparently has information in  
11 his file.

12 Q Do you know the nature of it?

13 A I am relying on my attorney to tell me that he  
14 has information in his file.

15 Q Is it a document evidencing Lazard's partici-  
16 pation in arranging the sale to Mediabanca?

17 A That is what he has informed me is his con-  
18 clusion.

19 MR. COSTIKYAN: I would like to have that  
20 document or those documents produced.

21 MR. FOLEY: I will have to review my file on  
22 the matter.

23 Q What participation, if any, did Mr. Rohatyn  
24 have in the arranging of the sale by ITT to Mediabanca?

25 MR. FOLEY: I will have to interpose another

1 objection now.

2 Do I understand that you are asking him for any  
3 information that he obtained from a source other than me?

4 MR. COSTIKYAN: I am asking him for any  
5 information he obtained. I am not interested in where  
6 he got it from.

7 MR. FOLEY: Then I would have to instruct him  
8 not to give any information that he obtained from me or  
9 through me.

10 MR. COSTIKYAN: I will take it both ways.

11 Q Do you have any information that you obtained  
12 from any source other than your lawyer as to Mr. Rohatyn's  
13 participation in the sale of the Hartford stock by ITT  
14 to Mediabanca?

15 A Other than what I have heard through the com-  
16 munications media and, as well, from my attorney --  
17 heard or read through the communications media.

18 Q What have you heard or read through the com-  
19 munications media other than Defendant's Exhibit A for  
20 Identification?

21 A I think there have been certain communications  
22 media which mentioned Mr. Rohatyn's relationship but  
23 I can't specifically tell you which I read. I don't  
24 know whether I could allude to any specific newspaper  
25 writing or any specific publication.



Q I am directing my question to his participation in the sale of the Hartford stock by ITT.

A I am answering that question that way.

Q Do you have a file of clippings that you collected in connection with this action?

A My attorney has.

MR. COSTIKYAN: May that file be produced?

MR. FOLEY: I have some here with me.

I would like to produce an excerpt, a news item on page 17 of The New York Times of April 9, 1972 which refers to Mr. Rohatyn.

I also have page 25 of The New York Times of April 4, 1972 which refers to Lazard Freres and, I believe, to Mr. Rohatyn.

May I also indicate that The New York Times of March 26, the news report which begins on page 1 and continues on page 46, not only contains a reference to Mr. Rohatyn but also contains his picture.

THE WITNESS: By the way, I wonder whether your exhibit contains the other article, including his picture.

MR. COSTIKYAN: Yes.

THE WITNESS: Page 46.

MR. COSTIKYAN: Yes.

Would you mark the clipping of Sunday, April 4, as Defendant Lazard Exhibit B for Identification and the

clipping of April 9 as Defendant Lazard Exhibit C for Identification.

(Newspaper clipping from The New York Times of Tuesday, April 4, 1972, entitled, "Nader Aids Says Banking Firm Sold Much ITT Stock Before Trust Report" marked Defendant Lazard Exhibit B for Identification.)

(Newspaper clipping from The New York Times of Sunday, April 9, 1972, entitled, "ITT Tax Rulings Queried By Nader" marked Defendant Lazard Exhibit C for Identification.)

Q Mr. Segun, I don't want any confusion about the question. My question was directed specifically to the participation by Mr. Rohatyn and Mr. Meyer in the transaction between ITT and Mediabanca.

Now, you have given me two clippings which refer to the fact that Mr. Rohatyn is a director and had something to do with the settlement of an antitrust case.

MR. FOLEY: This is information exclusive of my communications to him?

MR. COSTIKYAN: Yes.

A I really can't tell you. I don't know that I had obtained it from other communications.

Q What relationship did Mr. Rohatyn have in negotiating the ITT sale to Mediabanca?

1  
2 A I would say that the complaint speaks for itself,  
3 doesn't it?

4 Q I am asking you what evidence you have to  
5 support the allegations of the complaint.

6 MR. FOLEY: Once again, I have the same trouble,  
7 and the same objection to raise, that if you wish to  
8 confine your question to what information he has obtained  
9 from sources other than me, I have no objection.

10 MR. COSTIKYAN: I will put it both ways then.

11 Q What sources other than Mr. Foley?

12 A At this time, none.

13 Q What did Mr. Foley tell you about Mr. Rohatyn's  
14 participation in the sale to Mediabanca?

15 MR. FOLEY: I would object to that and instruct  
16 the witness to refrain from answering.

17 Q What about Mr. Mayer, what connection did he  
18 have with that transaction?

19 MR. FOLEY: Once again, exclusive of my  
20 information.

21 MR. COSTIKYAN: I will put it both ways.

22 Q Do you have any information at all, derived  
23 from any source other than Mr. Foley, of what role  
24 Mr. Mayer played in the sale of this Hartford stock  
25 to Mediabanca?

A Again, I can't be specific about any

1 communications other than what has been identified, but  
2 basically, at this point my answer would be the same as  
3 to Mr. Meyer as I answered with respect to Mr. Rohatyn.

4 Q Which is that you have no information from  
5 sources other than your counsel that they had anything  
6 to do with the transaction?

7 A Unless my recollection between now and another  
8 time, or perhaps I do find some material that I had  
9 previously seen or read, and I can make reference to  
10 that.

11 Q But at this point you have no recollection?

12 A Correct.

13 Q And now I put the question as to what  
14 Mr. Foley told you Mr. Meyer had to do with this trans-  
15 action.

16 MR. FOLEY: Same objection.

17 Q Was the Dreyfus Fund a party to this transac-  
18 tion between ITT and Mediabanca?

19 A The Fund itself?

20 Q Yes.

21 A Not to my knowledge.

22 Q Did any aspect of that transaction involve The  
23 Dreyfus Fund so far as you know?

24 A The sale to Mediabanca?

25 Q Right.

2 MR. FOLEY: Once again, I hate to bring it up,  
3 but may I ask for a distinction to be drawn?

4 MR. COSTIKYAN: I don't want to draw a  
5 distinction; I want to find out what the facts are.

6 MR. FOLEY: I would ask him not to give any  
7 information that he obtained from counsel. If he has  
8 any information beyond that, I have no objection to him  
9 giving it to you.

10 MR. COSTIKYAN: I don't understand this,  
11 Mr. Foley. You bring a complaint, and I am entitled  
12 to ascertain what he has to complain about. I am not  
13 asking for confidential communications between you and  
14 him.

15 MR. FOLEY: Well, the situation is simply this,  
16 that the plaintiff saw publicized comments in news  
17 reports indicating that The Drayfus Fund had been  
18 victimized creating the belief in his mind, at least,  
19 to the extent where it justified inquiry with respect  
20 to his belief.

21 What happened then was that the plaintiff,  
22 who was a friend of mine of some 20 years standing,  
23 and who knows that I have been involved in cases of  
24 this type, contacted me and asked me if there was  
25 anything to it.

The result of that was that at his request I

1 conducted an investigation.

2 MR. COSTIKYAN: Mr. Foley, I understand that,  
3 but the purpose of a deposition, as I understand it,  
4 is to ascertain what facts you have to support the  
5 allegations in the complaint.

6 Now, I am not trying to find out what you told  
7 your client. I don't care whether you told him anything  
8 or didn't tell him anything, whether he got information  
9 from you or didn't get information from you; I just want  
10 to know what it is that he is complaining about.

11 MR. FOLEY: Well, the fact still remains that  
12 when you ask him what I told him --

13 MR. COSTIKYAN: But I didn't ask him what you  
14 told him; I asked him what facts he had with reference  
15 to the complaint which he --

16 MR. FOLEY: If you ask him questions which  
17 result in his responding by divulging to you communica-  
18 tions that I had between him and myself, then I object.

19 MR. COSTIKYAN: I didn't ask him to reveal any  
20 confidential communications. If he wants to volunteer  
21 it on his own, then he is the one who would be breaching  
22 the communications, but I am merely asking him to --

23 MR. FOLEY: He is not breaching the communica-  
24 tions. If it is necessary for him to give total answers  
25 to some of these questions that you are asking here,

1 then it would be necessary for him to tell you what I  
2 told him and I don't think that he has to. Those are  
3 privileged communications.

4 MR. COSTIKYAN: Mr. Foley, we will have to get  
5 a ruling on this. It is obvious to me that if what you  
6 say is true, then a plaintiff can bring a lawsuit and  
7 just sit back and say, "I don't know anything about  
8 it except for what my counsel told me," and then you  
9 can go to trial and, for the first time, disclose what  
10 the evidence is. That is not the purpose of the  
11 federal rules.

12 MR. FOLEY: At this stage of the game the  
13 only thing I can tell you is this, that you have other  
14 means of discovery, of course, but at this point I do  
15 not believe it is proper to compel the plaintiff to  
16 disclose the information that he received as a result  
17 of my work product, to disclose communications that  
18 he received from me. I think that that is a valid  
19 objection and one which I must stay with.

20 MR. COSTIKYAN: Mr. Foley, tell me one thing:  
21 When do you intend to tell us what Mr. Mayer had to do  
22 with this transaction?

23 Don't you think we are entitled to find that  
24 out now?

25 MR. FOLEY: In due course I am sure you will.

1 MR. COSTIKYAN: Well, how will we do that?

2 MR. FOLEY: I am not going to litigate that:  
3 here. I have an objection to the present question, to  
4 the present situation, and that is all that we are talk-  
5 ing about.

6 MR. COSTIKYAN: I want to make clear that my  
7 questions are directed to what facts, what documents,  
8 what evidence this witness has to support the allega-  
9 tions in his complaint.

10 I have not attempted to inquire into the  
11 nature of the communications between him and his attor-  
12 ney. It is only because you have volunteered a fact,  
13 which I never thought to ascertain, that you have been  
14 able even to make a basis for asserting a privilege,  
15 and I guess we will just have to get rulings.

16 It seems to me clear that if you bring a lawsuit  
17 you have got to tell what the evidence is on which you  
18 are relying or else you are subject to dismissal.

19 (No response.)

20 MR. COSTIKYAN: Well, let me get back to this  
21 question:

22 BY MR. COSTIKYAN:

23 Q Do you know of any way in which The Dreyfus  
24 Fund participated in the sale by ITT of the Hartford  
25 shares to Madiabanca?



2 A (No response.)

3 Q I am talking about the sale now.

4 MR. FOLEY: Once again, this is other than  
5 anything he received from me.

6 MR. COSTIKYAN: I didn't say that. I just  
7 want to know the answer to the following question:

8 Q Did Dreyfus have anything to do with the sale  
9 by ITT to Mediabanca?

10 A At this point, I do not know.

11 Q Do you know when for the first time Dreyfus  
12 acquired any shares in ITT?

13 A Are you talking about any shares whatsoever or  
14 are you talking about the particular transaction in which  
15 they acquired it from Mediabanca?

16 Q Let us take the Mediabanca situation.

17 A That is the only thing I am alleging in my  
18 complaint.

19 Q That is what I wanted to get clear. When was  
20 the Mediabanca transaction?

21 A That took place somewhere in -- was it the  
22 summer of 1970? Is that it?

23 The summer of 1970.

24 Q The transaction we are discussing was arranged  
25 in November 1969, according to your complaint; isn't  
that right?

1 A No, no. You are now talking about the purchase?

2 Q That's right.

3 A By Dreyfus from Mediabanca?

4 Q I am talking about whether or not Dreyfus had  
5 any connection whatsoever with the acquisition of the  
6 Hartford stock by Mediabanca from ITT in November of  
7 1969.

8 A I cannot answer that question.

9 Q You don't know of any connection?

10 A No, I don't say I don't know of any connec-  
11 tion. At this point I don't know of the information,  
12 the information that I have available to me at this time.

b4

13 Q Do you have any information available to you  
14 at this time?

15 A The information available to me at this time  
16 as to The Dreyfus Fund having anything to do with the  
17 transaction, is one thing, but if you are talking about  
18 the people representing The Dreyfus Fund, then you have  
19 another subject.

20 Q I am talking about the fund itself.

21 A If you are going to divorce itself from its  
22 principals or officers, then as far as I am concerned  
23 I don't know of any information. If you think of the  
24 fund in terms of its representatives acting for the fund,  
25 then I would have to say yes, I do have information.

1  
2 Q What is that information?

3 A That information would be in the hands of  
4 my attorney.

5 Q Well, you have it. Let's hear it.

6 A It is in the hands of my attorney.

7 Q Isn't it in your mind? Do you know what it is?

8 A Mr. Costikyan, I am not going to sit here and  
9 be cross-examined by you because that is not the proper  
10 thing to do at an examination before trial.

11 Q Mr. Segan, you are the witness.

12 A If you are going to ask me questions on an  
13 informational basis and not accept my bases, I will  
14 just pick myself up and walk out.

15 MR. FOLEY: May we go off the record?

16 MR. COSTIKYAN: This is silly, to go off the  
17 record, Mr. Foley. I am trying to find out what the  
18 facts are. I am not trying to do anything except find  
19 out what this plaintiff is complaining about, and all  
20 he has to do is tell me yes, no, I don't know, or I  
21 do know.

22 MR. FOLEY: I think the problem that is being  
23 created is that there is doubt in the witness' mind,  
24 from what he has told me, I gather, as to whether or  
25 not the transaction in November, that portion of the  
overall course of events which is represented by the

1 sale to Mediabanca, is to be isolated from the whole  
2 thing. In other words, if you don't mind my testifying  
3 for a moment for the purpose of helping you, I think  
4 his feeling is that this entire course of conduct is  
5 really to be regarded as one transaction in which certain  
6 people came at certain times.

7 MR. COSTIKYAN: Then let him say so if that  
8 is his theory. I want to know what he is complaining  
9 about.

10 Q Were you injured in any way by reason of the  
11 sale of Hartford stock by ITT to Mediabanca putting aside  
12 what happened afterwards?

13 A In its most isolated state?

14 Q Yes.

15 A If any of the principals of The Dreyfus Fund  
16 or the Dreyfus Corporation had anything to do with it,  
17 to the extent that they neglected the business of The  
18 Dreyfus Fund, then I would say so.

19 Q Do you have any information at all that  
20 officials of The Dreyfus Fund had anything to do with the  
21 sale to Mediabanca?

22 MR. FOLEY: To clarify that again, are you  
23 discussing just the Mediabanca case itself?

24 MR. COSTIKYAN: That's right.

25 MR. FOLEY: You are talking about the

1 transaction of 1969?

2 MR. COSTIKYAN: That's right.

3 MR. FOLEY: In November of 1969?

4 MR. COSTIKYAN: That's right.

5 A If we are talking about that in its isolated  
6 state without all that came about later, if nothing else  
7 had happened after that, and if there had not been a  
8 decline in the assets of The Dreyfus Fund subsequent  
9 thereto, or about that time --

10 Q Mr. Segan, can you answer the question that I  
11 put without all the if's, and's and but's which you can  
12 put in later; I am talking about the sale in 1969 of  
13 Hartford shares.

14 A I can't answer the question the way you put  
15 it.

16 Q Why not?

17 A I can't answer the question the way you put  
18 it because I am telling you that this is the transaction  
19 that, from its inception to the end, must be treated  
20 completely, and that's it.

21 Q When did this transaction from its beginning  
22 to the end injure The Dreyfus Fund?

23 A The actual injury to The Dreyfus Fund took  
24 place when Dreyfus bought back those ITT shares, and that  
25 took place sometime in the summer of 1970.

1 Q Lot's move along to that. Prior to that time  
2 Drayfus Fund had not been injured so far as you know,  
3 is that right?

4 A I can't answer that.

5 Q Do you know of any injury it suffered prior  
6 to that transaction in which it acquired some of these  
7 ITT shares?

8 A Yes. I think there was injury.

9 Q What was it?

10 A In the decline of the assets of the --

11 Q Are you suing, in this lawsuit against Lazard  
12 Freres, because there was a decline in the value of the  
13 value of the assets of --

14 A Yes.

15 MR. FOLEY: Excuse me. I am going to have to  
16 interpose an objection. This complaint speaks for  
17 itself. It speaks for itself. I think that to engage  
18 in cross-examination into the legal theories of my  
19 client is not really in order.

20 Q Is there anything that you claim that Lazard  
21 did prior to its alleged participation in this trans-  
22 action in the summer of 1970 whereby Drayfus acquired  
23 the ITT shares from Modisbanca which gives rise to any  
24 claim on your behalf?

25 THE WITNESS: Please read that question again

3 MR. FOLEY: My objection would be this, that  
4 he has already testified that his view of the case is  
5 that the course of conduct beginning in late 1969  
6 through a large part of 1970 was a continuous course  
7 of conduct.

11 MR. FOLEY: To the extent that Drayfus Fund  
12 was injured by any part of it, all of it contributed  
13 towards the injury to The Drayfus Fund.

16 MR. FOLEY: It depends upon the type of injury  
17 you are talking about.

20 Q But for the fact that Dreyfus acquired these  
21 shares in the summer of 1970, have you any cause for  
22 complaint against Lazard?

Q Even if Dreyfus had not acquired these shares,

2 you would have a cause of action against Lazard?

3 MR. FOLEY: That is speculation.

4 MR. COSTIKYAN: It is not speculation,  
5 Mr. Foley.

6 Q But for Lazard's alleged participation in this  
7 transaction, do you have any complaint against Lazard?

8 MR. FOLEY: I really must interpose an objec-  
9 tion again.

10 The complaint has clearly stated here that by  
11 reason of becoming involved in the course of conduct  
12 that is the subject of this complaint, by reason of  
13 the fact that certain individual defendants and the  
14 Dreyfus Corporation became involved together with  
15 Lazard and others, in the course of conduct which is  
16 the subject of this litigation, one of the items of  
17 damage sustained by The Dreyfus Fund was the fact that  
18 it sustained a loss in its net asset value which we  
19 consider partially, at least, attributable to attention  
20 being paid to other things when it should have paid  
21 attention to the affairs of The Dreyfus Fund.

22 MR. COSTIKYAN: You mean attention being paid  
23 by the Dreyfus people?

24 MR. FOLEY: Put it this way: To the extent  
25 that Dreyfus Fund during this period of time, sustained  
a loss, a very substantial loss in its net asset value,



1 we feel that the first obligation of the Dreyfus  
2 Corporation and of certain of the individual defendants  
3 here would have been to devote all of their attention  
4 to that.

5 MR. COSTIKYAN: What obligation did Lazard  
6 have to devote any attention to Dreyfus?

7 MR. FOLEY: I am not saying that it had any  
8 obligation.

9 MR. COSTIKYAN: I am talking about Lazard,  
10 Mr. Foley, and not these other defendants.

11 MR. FOLEY: We are claiming that these people  
12 and Lazard functioned together in a course of conduct.

13 MR. COSTIKYAN: What did Lazard do, together  
14 with anybody else, in a course of conduct that hurt  
15 Dreyfus?

16 MR. FOLEY: Well, now, the complaint clearly  
17 alleges that the course of conduct here was that they  
18 engaged in a series of acts including this Mediabanca-  
19 ITT shares deal which led to a benefit being conferred  
20 upon the Dreyfus Midland Marine Corporation during the  
21 time that --

22 MR. COSTIKYAN: Let me stop you for a minute.

23 Did Lazard have anything to do with the  
24 Dreyfus Marine situation so far as you know?

25 MR. FOLEY: Well, our allegation clearly

2 indicates that they are --

3 MR. COSTIKYAN: What did they have to do with  
4 Dreyfus Marine Midland?

5 BY MR. COSTIKYAN:

6 Q Mr. Segan, can you specify anything that Lazard  
7 had to do with Dreyfus Marine?

8 A My attorney has information and has communicated  
9 with me, as far as I am concerned, and once again the  
10 complaint speaks for itself.

11 Q Your attorney has communicated information to  
12 you that Lazard had something to do with Dreyfus Marine;  
13 is that the answer to my question?

14 A My attorney has communicated information to  
15 me which has been incorporated, to some degree, in the  
16 complaint.

17 The complaint says what it has said, and in the  
18 complaint itself is language that would show the  
19 relationship of Lazard Freres to the transactions.

20 Q What relationship, if any, did Lazard Freres  
21 have to Dreyfus Marine?

22 A It speaks to --

23 Q Don't tell me what it speaks to. Tell me what  
24 relationship Lazard had to Dreyfus Marine.

25 A In particular, there is language in the  
complaint that shows the particular relationship.

1  
2 Q What is the relationship? I am here not to  
3 examine you as to what the complaint says but as to  
4 what the facts are, or what your claim is. What is it?  
5 What did Lazard have to do with Dreyfus Marine?

6 A Dreyfus Marine and the principals of the  
7 Dreyfus Corporation, as well as the principals of The  
8 Dreyfus Fund --

9 Q What paragraph are you reading from?

10 A I am not reading from anything, but I am  
11 looking at these so that I can specifically answer your  
12 question.

13 Q What are you looking at?

14 A I am now looking at 19. I am looking at 20.

15 Q Well, now, where is there any reference,  
16 in Paragraph 19, to Lazard having anything to do with  
17 Dreyfus Marine?

18 MR. FOLEY: We have how many questions pending  
19 right now?

20 MR. COSTIKYAN: I don't know. I don't get  
21 any answers to any questions so --

22 THE WITNESS: If you will read the paragraph,  
23 Mr. Costikyan --

24 Q All right. Let's just ask you: You pointed  
25 to 19; what did Lazard Frozes, Rohatyn or Mayer have  
to do with seeking business opportunities for Dreyfus

2 Marine? Let me put it this way: What business oppor-  
3 tunities did they seek?

4 MR. FOLEY: I have an objection again. I think  
5 that once again you are going into basically the legal  
6 theory of this complaint with this witness.

7 MR. COSTIKYAN: I asked the witness for a  
8 fact. What business opportunities did Lazard Freres  
9 seek for Dreyfus Marine? That calls for a fact. It  
10 is not a theory.

11 MR. FOLEY: We have alleged in this complaint --

12 MR. COSTIKYAN: I have read what you have  
13 alleged in the complaint. I merely want to know what  
14 the facts are.

15 Q What business opportunity did Lazard seek for  
16 Dreyfus Marine?

17 MR. FOLEY: We never claimed that they sought  
18 anything. The paragraph, Paragraph No. 19 --

19 MR. COSTIKYAN: Now, please, Mr. Foley,  
20 I am going to have to ask you to stop this because I  
21 don't think it is right.

22 MR. FOLEY: I object to the form of the  
23 question because you are asking him, and you did ask  
24 him on the basis of Paragraph 19 of the complaint, what  
25 business opportunity did Lazard Freres seek for Dreyfus  
Marine, and now, what the paragraph says is that during

1

Sagan

32

2 a certain period of time Midland Marine and Dreyfus had  
3 a direct interest in the success of Dreyfus Marine and  
4 that Dreyfus Corporation, its officers, directors and  
5 various others, with actual or constructive knowledge,  
6 with the consent, cooperation and assistance of Midland  
7 Marine, ITT, Lazard Freres, et cetera, engaged in seek-  
8 ing --

9 MR. COSTIKYAN: All right. What cooperation  
10 or assistance did Lazard Freres give to Marine Midland  
11 and Dreyfus to seek business opportunities for Dreyfus  
12 Marine?

13 MR. FOLEY: (To the witness) If you know,  
14 you may give a specific answer to that question.

15 A I am referring to Paragraph 21.

16 Q Mr. Sagan, please answer my question. If you  
17 don't know, say, "I don't know of any," and we will  
18 move along.

19 A Mr. Costikyan, I can't say I don't know because  
20 we have made an averment in Paragraph 21 --

21 Q You haven't made an averment. Your lawyer:  
22 signed a complaint and you made a lot of allegations  
23 in it, and I am entitled to find out what the facts are.

24 What cooperation or assistance did Lazard give  
25 to Marine Midland and Dreyfus in order to help them  
seek business opportunities for Dreyfus Marine? Now,

1 that is a simple question. Do you know of any?

2 A The information that I have obtained is  
3 information I have obtained from my attorney after I  
4 asked him to conduct an investigation.

5 Q Are you telling me that he told you of some  
6 instance where Lazard Freres cooperated and assisted  
7 in seeking business opportunities for Dreyfus Marine?

8 MR. FOLEY: As a matter of fact, Mr. Costikyan,  
9 the complaint says just that.

10 THE WITNESS: That's exactly what I'm telling  
11 him.

12 MR. COSTIKYAN: I am asking for a single  
13 instance in which they did so.

14 MR. FOLEY: We have alleged in the complaint  
15 that Lazard Freres negotiated the sale from Mediabanca  
16 to Dreyfus Fund, the alleged sale.

17 MR. COSTIKYAN: I am going to get to that.

18 MR. FOLEY: And I think it should be perfectly  
19 plain from the complaint here that our allegation is  
20 that part and parcel of the entire deal whereby that  
21 sale took place included an arrangement whereby a  
22 pension fund in the sum of approximately \$10 million  
23 was placed under the management and control of Dreyfus.

24 MR. COSTIKYAN: What if anything did Lazard  
25 have to do with placing the pension funds?

1 MR. FOLEY: They negotiated the deal.

2 MR. COSTIKYAN: You say they negotiated the  
3 deal?

4 MR. FOLEY: I refer you to Paragraph 21(d) of  
5 the complaint.

6 MR. COSTIKYAN: Which deal? The sale to  
7 Dreyfus Fund?

8 MR. FOLEY: The sale from Mediabanca to Dreyfus.

9 BY MR. COSTIKYAN:

10 Q Let me ask you this question and maybe this  
11 will ease things:

12 Other than the sale, arranging the sale, or negotiat-  
13 ing the sale from Mediabanca to The Dreyfus Fund, are  
14 there any facts that you know of evidencing Lazard's  
15 participation in this alleged injury to Dreyfus?

16 MR. FOLEY: Negotiating the sale? If you are  
17 talking about negotiating the sale including such things  
18 as transferring securities, et cetera, yes, that's right.

19 MR. COSTIKYAN: Transferring the securities?

20 MR. FOLEY: No. When you said, "negotiating  
21 the sale from Mediabanca to Dreyfus Fund," there were  
22 other aspects beyond just negotiating.

23 MR. COSTIKYAN: Let's just stick to this:

24 BY MR. COSTIKYAN:

25 Q What did they have to do with negotiating the

1  
2 sale, Mr. Sogan, do you know?

3 MR. FOLEY: If you know, you can say so.

4 A Again, I can't answer that other than the  
5 information that my attorney has conveyed to me and  
6 what was conveyed in the complaint.

7 Q I plead with you, can you now break this veil  
8 of secrecy and tell me what it is that Lazard had to  
9 do with the sale from Mediabanca to Dreyfus? What did  
10 they do that you claim they did?

11 MR. FOLEY: We are claiming, once again,  
12 while reserving all objections that I have to any  
13 disclosure and without prejudice to it, Paragraph 21(d)  
14 of the complaint which alleges very clearly, I think,  
15 that Lazard Freres acted as an intermediary between  
16 the interested parties --

17 MR. COSTIKYAN: You mean between Mediabanca  
18 and Dreyfus?

19 MR. FOLEY: I use the words, "alleged sale"  
20 there.

21 MR. COSTIKYAN: But is that what you mean,  
22 that it was the intermediary between Mediabanca and  
23 Dreyfus?

24 MR. FOLEY: They were the intermediary between  
25 ITT and Mediabanca and between Mediabanca and Dreyfus.

MR. COSTIKYAN: Let me see if I can understand



1 this. You have no complaint about Lazard's role in  
2 arranging the sale to Mediabanca but for the fact that  
3 it then arranged for the sale from Mediabanca to Dreyfus?  
4

5 MR. FOLEY: No. I consider it all one trans-  
6 action, and I think if you are going to start taking  
7 out any portion of it, you are dealing in pure specula-  
8 tion.

9 MR. COSTIKYAN: So that if any part of the  
10 transaction is out, then you are talking about a differen-  
11 ball game?

12 MR. FOLEY: I consider the entire course of  
13 conduct to be one transaction.

14 MR. COSTIKYAN: Other than Lazard's participa-  
15 tion in the sale to Dreyfus, can you specify any other  
16 act it did on the basis of which you made it a defendant  
17 here?

18 MR. FOLEY: Other than functioning as an  
19 intermediary.

20 MR. COSTIKYAN: Between whom?

21 MR. FOLEY: Between all of the parties here.  
22 They functioned between ITT, Mediabanca, and the various  
23 individuals who are named.

24 MR. COSTIKYAN: Isn't it a fact that if they did  
25 not function as an intermediary between ITT, and Mediabanca,  
and the various individuals, you wouldn't be here

1 complaining if they --

2 MR. FOLEY: If the whole transaction had not  
3 occurred.

4 MR. COSTIKYAN: Isn't it a fact that if it had  
5 not been for the sale to Dreyfus you wouldn't be here  
6 complaining?

7 MR. FOLEY: Let us say that the transaction  
8 occurred up to the point where the sale was about to  
9 be made to Dreyfus Fund and Dreyfus Fund had sustained  
10 any particular type of loss. We are now engaged in  
11 pure speculation, of course, but to carry it on, since  
12 apparently you are thinking in these terms, if it had  
13 arrived at the point where Mediabanca's sale to Dreyfus  
14 failed at the last minute but that in the course of  
15 preparing for it some damage occurred, we would not be  
16 here.

17 MR. COSTIKYAN: Let me get back to my question,  
18 Mr. Segan.

19 BY MR. COSTIKYAN:

20 Q Your attorney, when I asked him and you what  
21 Lazard did in connection with this transaction, factually,  
22 identified its role as the intermediary between ITT  
23 and Mediabanca in the first instance, and Mediabanca  
24 and Dreyfus in the second instance.

25 Now, do you know of anything else it did that in

1  
2 any way injured The Dreyfus Fund in connection with  
3 these transactions? Do you know of any other role other  
4 than its role as an intermediary?

5 A The answer would stand on its position as an  
6 intermediary and whatever it, Lazard Freres, did to  
7 act in that capacity.

8 MR. FOLEY: In other words, the answer is that  
9 beyond what it may have done in its role as an inter-  
10 mediary, the answer is that you have no information of  
11 other independent acts that created damage in this case.

12 Q Mr. Segan, you do allege in your complaint that  
13 Lazard Freres was involved in the sale of shares to Dreyfus.  
14 When did you first learn of Lazard's participation in  
15 that transaction?

16 MR. FOLEY: I think he has already testified  
17 to that.

18 MR. COSTIKYAN: I don't think so.

19 MR. FOLEY: Exhibit A.

20 Q Do you have any other source of information  
21 or information about Lazard's participation in the sale  
22 of shares from Mediabanca to Dreyfus other than Exhibit A?

23 MR. FOLEY: Once again, can we put in the  
24 reservation for this very troublesome area of my work  
25 product?

26 MR. COSTIKYAN: I don't want to.

1 MR. FOLEY: I must do so.

2 MR. COSTIKYAN: You want to instruct him not  
3 to answer on the ground that I have asked for a confi-  
4 dential communication; if so, you may do so.

5 MR. FOLEY: I would ask him not to include in  
6 his answer any information that came from me as his  
7 attorney.

8 MR. COSTIKYAN: If you want to instruct him  
9 to do that, all right.

10 Q Now, what is the answer with that limitation?

11 A I have none.

12 Q Do you have any documents in your possession,  
13 or under your control, evidencing Lazard's role in the  
14 sale from Mediabanca to Drayfus?

15 A Other than that, personally I have no documents.

16 Q Do you have any under your control?

17 MR. FOLEY: You are referring to mine?

18 MR. COSTIKYAN: Yes.

19 A When you say under my control, you are now  
20 discussing that which is under my attorney's control?

21 Q I don't care where it is. Documents that  
22 are under your control. I would assume they would  
23 include those in your secretary's hands, your accountant's  
24 hands, or in your lawyer's hands.

25 A Anybody under my domain and control within

1  
2 the four walls of my office, no.

3 Q Do you know if your attorney has any such  
4 documents?

5 A I don't, really.

6 Q Now, in your complaint, Paragraph 21(d), you  
7 allege that Mediabanca sold the shares to Dreyfus through  
8 Lazard Freres. What did Lazard Freres do? What evidence  
9 do you have that Lazard Freres was the agency through  
10 which those shares were sold?

11 A Again, I don't know whether that is language  
12 that involves semantics.

13 I would say that it is intermediary again.

14 MR. FOLEY: I won't let him answer unless we  
15 get the same reservation here. It is very troublesome  
16 to me where my work product is involved here.

17 MR. COSTIKYAN: Make your objection, will you,  
18 Mr. Foley? Do you object on the ground that I have  
19 asked him to disclose a confidential communication?

20 MR. FOLEY: Yes, and I will instruct him to  
21 withhold from his answer any information he received  
22 from me. If he obtained it from any other source, I  
23 have no objection to it.

24 Q What is the answer, as your attorney has now  
25 reframed the question so as to exclude communications  
with him?

1           A     My answer would be the same as I have answered  
2     previously, which would be that if I had obtained some  
3     information through communications media, and other  
4     specific information through my attorney.

5           MR. FOLEY: Essentially, the communication  
6     media refers to newspaper articles marked as exhibits  
7     today, and similar ones.

8           Q     Isn't it a fact that the source of all your  
9     information with reference to Lazard Freres' involvement  
10    is these three articles, and you can exclude from that  
11    what your attorney has told you?

12          MR. FOLEY: No. I object to the form of the  
13    question in this sense, that there has been testimony  
14    here that there was an investigation which was conducted  
15    by me, and I don't think it is proper to characterize --

16          MR. COSTIKYAN: Mr. Foley, you really are  
17    filling this record with testimony.

18          MR. FOLEY: Well, I am because I think it is  
19    being filled with a certain amount of innuendo here.

20          When you ask a question such as that last  
21    one, that is a loaded question. I don't think it fairly  
22    characterizes what is happening here.

23          MR. COSTIKYAN: Then he can say that that isn't  
24    true, can't he?

25          MR. FOLEY: No. I don't think that is

1 necessarily so.

2 Q Mr. Segan, precisely what did Lazard do in  
3 connection with the sale from Mediabanca to The Dreyfus  
4 Fund?

5 MR. FOLEY: Once again, excluding from the  
6 testimony information you received from me.

7 MR. COSTIKYAN: You can exclude anything you  
8 want.

9 MR. FOLEY: Let the record reflect that he is  
10 excluding it.

11 A With respect to the precise information that  
12 you seek, which I would presume would be the actual  
13 acts that would be the basis for my allegations in the  
14 complaint, that information is with my attorney and as  
15 a result of his investigation.

16 Q Have you seen it?

17 A I have answered you before that these are the  
18 result of oral communications.

19 Q So I take it then that all of the information  
20 you have to support the claim that Lazard Freres was the  
21 intermediary in the transaction between Mediabanca and  
22 The Dreyfus Fund is information that you obtained from  
23 your lawyers or from these newspaper clippings?

24 A I would say yes.

25 Q Let me ask you this, Mr. Segan: But for

1 Lazard's participation in the sale between Mediabanca  
2 and Dreyfus, do you have any evidence that Lazard  
3 assisted or cooperated in any of the transactions about  
4 which you complained?

5 MR. FOLEY: You are not asking him what it is  
6 now, you are just asking him does he have any?

7 MR. COSTIKYAN: Yes.

8 Q I am now asking you what it is.

9 A There again my answer will rest on the same  
10 grounds that I have answered previously.

11 Q You mean either it is in the newspapers or it  
12 is something your lawyer told you?

13 A Yes.

14 Q You allege, in Paragraph 20(b) that the  
15 defendants, and you there include them all, employed a  
16 device, scheme or artifice to defraud The Dreyfus Fund.  
17 Other than Lazard's participation in the sale of these  
18 securities to Dreyfus, do you know of any act that they  
19 performed which constituted part of a device, scheme  
20 or artifice to defraud the Dreyfus Fund?

21 MR. FOLEY: The question, once again, is,  
22 does he know of any, without identifying what it is?

23 MR. COSTIKYAN: Yes.

24 A The answer would be yes.

25 Q What is it?



1  
2 A I would have to explain that this is informa-  
3 tion obtained for me by my attorney.

4 Q Other than the attorney's information, you  
5 have no such knowledge?

6 A That is correct.

7 MR. FOLEY: There are, incidentally, factual  
8 allegations in the complaint that are relevant.

9 MR. COSTIKYAN: I am not examining about what  
10 the complaint says; I am examining him about what facts  
11 he has.

12 Q Let's go to Paragraph 20(a). There you allege  
13 that Lazard assisted or cooperated in acts or practices  
14 which involve personal misconduct constituting a breach  
15 of fiduciary duties owed to The Dreyfus Fund.

16 Other than Lazard's participation in the transac-  
17 tion between Mediabanca and The Dreyfus Fund, do you know  
18 of any act they engaged in which evidences such a breach  
19 of fiduciary duty to The Dreyfus Fund?

20 MR. FOLEY: Once again, do you or don't you  
21 know?

22 A Yes.

23 Q What do you know?

24 A Again, the same answer as before.

25 Q Other than what your attorney has told you,  
do you have any such knowledge?

2 A No.

3 Q Well, I can continue through the rest of these.

4 In Paragraph 20(c), you alleged that Lazard engaged  
5 in transactions, practices and a course of conduct which  
6 operated to defraud and deceive Dreyfus Fund.

7 Again, other than Lazard's participation in the sale  
8 to Dreyfus Fund, do you know of anything that Lazard did  
9 that constituted a device, scheme or artifice to defraud  
10 the Dreyfus Fund?

11 A Again the answer is yes.

12 Q What do you know?

13 A Again the answer would be based on my attorney's  
14 investigation at my request.

15 Q Other than what your attorney has told you,  
16 you have no such knowledge?

17 A That's right.

18 Q Is that true as to the allegations in (c) and  
19 (d) of Paragraph 20?

20 MR. FOLEY: May we just add one thing, that:  
21 I assume we are in agreement that these answers also  
22 include, "by reference to exhibits that were marked and  
23 any factual statements made"?

24 MR. COSTIKYAN: Yes.

25 Q Is the same true of Paragraphs (c), (d) and  
(e) of Paragraph 20?

1 A Yes. It would be based on the same information  
2 that I have been relying upon with respect to the other  
3 allegations, the same source of information.

4 Q And you decline to furnish us with the informa-  
5 tion itself because of the attorney-client privilege?

6 MR. FOLEY: On his attorney's instructions.

7 Q Is that correct?

8 A On my attorney's instructions, yes.

9 Q On the claim that it is privileged information?

10 MR. FOLEY: And also on the claim that it is  
11 a work product, a privileged communication and a work  
12 product.

13 Q Let's look at Paragraph 22. You there refer  
14 to the decline in total net assets of The Dreyfus Fund.  
15 Other than Lazard's alleged participation in the  
16 sale of the ITT stock by Mediabanca to Dreyfus, do you  
17 know of any act performed by Lazard which contributed  
18 to that loss?

19 A Yes.

20 Q What is it?

21 A There again I would tell you that that would  
22 be based upon the information obtained from sources that  
23 I have already described.

24 Q Do you have any such information other than  
25 what your attorney told you?

1  
2 A I am sorry, I may add one more. With respect  
3 to the source of the decline in net assets.

4 Q I didn't ask you for the source, you know;  
5 I asked you if you had any such information.

6 A I do.

7 Q What is it? Not what the source is but what  
8 is the information?

9 A That there has been a decline in the net assets  
10 of The Dreyfus Fund.

11 Q What did Lazard have to do with it but for its  
12 participation in the sale of these securities?

13 A And there again I tell you that the only way  
14 I can give you that answer would be to give you an answer  
15 from information that my attorney has provided me.

16 Q Other than what your attorney has told you,  
17 do you know of anything that Lazard Freres did to  
18 contribute to that decline other than its participation?

19 A (No response.)

20 Q What did Lazard have to do with the decline in  
21 the net asset value of The Dreyfus Fund but for its  
22 alleged participation in the sale of these ITT securi-  
23 ties by Mediabanca to Dreyfus?

24 MR. FOLEY: If you know.

25 A I can--

MR. FOLEY: There is an objection to the form

2 of the question.

3 MR. COSTIKYAN: Well, if there is an objec-  
4 tion, let's make the objection.

5 MR. FOLEY: I wish to make the objection.  
6 The objection is that he answered this already. He  
7 testified before that outside of the role that Lazard  
8 Freres played as an intermediary here --

9 MR. COSTIKYAN: This is not proper at all.  
10 I have given you a great deal of leeway. It is really  
11 not proper at all.

12 MR. FOLEY: The question has been asked and  
13 answered.

14 You are asking him once again what did Lazard  
15 Freres do apart from acting as an intermediary in this  
16 transaction. Now, he has testified to that before.

17 Our claim is that all misconduct on their  
18 part is within the framework of that role.

19 MR. COSTIKYAN: Mr. Foley, this is most  
20 improper, and if it continues we will have to get a  
21 ruling.

22 I am entitled to ask my questions. I don't  
23 need to ask them in a way that you like them.

24 MR. FOLEY: But you are not entitled to be  
25 repetitive.

MR. COSTIKYAN: I am not being repetitive, and

1 I think this is very improper, and I don't think it is  
2 going to be the kind of record you are going to be  
3 happy with later.

4 MR. FOLEY: I am not happy with the question.

5 MR. COSTIKYAN: Well, I don't put questions  
6 in order to make you happy.

7 MR. FOLEY: I know you don't, but --

8 MR. COSTIKYAN: I put them in order to ascer-  
9 tain facts, and I am having a lot of trouble.

10 MR. FOLEY: I don't have to acquiesce with  
11 respect to your questions just to make you happy.

12 MR. COSTIKYAN: It is not your function to  
13 acquiesce; it is your function to say, "I object and  
14 instruct the witness not to answer," if that is what you  
15 are trying to say. Let's have an end to these inter-  
16 polations, interruptions and discourses.

17 MR. FOLEY: There was an objection to the  
18 form of the question.

19 MR. COSTIKYAN: All right, you have made your  
20 objection as to form. And now I will go ahead and ask  
21 for an answer, and I will take my chances on the form  
22 of the question.

23 MR. FOLEY: I will have to instruct him not  
24 to answer.

25 MR. COSTIKYAN: On what ground?

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Segan

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MR. FOLEY: I have just give you the grounds.

It is repetitive. It has been asked and answered already.

BY MR. COSTIKYAN:

Q Mr. Segan, in Paragraph 23 of your complaint you allege that in substance there were losses of beneficial business opportunities by the fund. What if anything did Lazard have to do with the loss of such business opportunities?

A There again I would have to tell you that as part and parcel of the entire transaction -- and the specifics of which have been obtained from my attorney -- and any communications from the newspapers and --

MR. COSTIKYAN: Read the question and answer back, please.

(Question and answer read.)

THE WITNESS: Should I finish?

Q Please do.

A And that the allegations you are referring to in paragraph 23 for loss of the said beneficial business opportunities are part and parcel of the entire transaction that we are alleging in this particular complaint, the specifics of which you are asking me about, which I have obtained through my attorney's investigation.

Q Do you care to specify anything that Lazard had to do with the loss of any business opportunities

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1  
2 by The Dreyfus Fund?

3 MR. FOLEY: Once again, it is not a question  
4 of whether he would like to or not.

5 MR. COSTIKYAN: Do you want to object to the  
6 question?

7 MR. FOLEY: I do.

8 MR. COSTIKYAN: All right, you object.

9 MR. FOLEY: I object to the extent of my  
10 previous objections. If he is being asked to divulge  
11 what I told him, then I have an objection to it.

12 MR. COSTIKYAN: I just asked, do you care to.  
13 I guess the answer is, no, you don't care to.

14 THE WITNESS: I sit on my attorney's objec-  
15 tion.

16 Q Let's look at Paragraph 24. There you allege  
17 that The Dreyfus Fund was, in effect, deprived of the  
18 guidance of the defendants Howard Stain, Richard  
19 Johnson, Julian Smerling and Lawrence Greene.

20 What if anything did Lazard have to do with  
21 depriving The Dreyfus Fund of such guidance by such  
22 defendants?

23 A Again, by participating in all the transactions  
24 that are itemized or detailed in the complaint.

25 Q But for Lazard's alleged participation in  
the sale of the IIT stock by Mediabanca to Dreyfus, do



1 you know of anything that Lazard had to do with Drayfus  
2 during the entire period covered by the complaint?

3 MR. FOLEY: Again, I object on the same  
4 grounds as before, asked and answered.

5 Q Do you know of anything other than what your  
6 attorney told you?

7 MR. FOLEY: No. Excuse me. That is not my  
8 objection. My objection is on the ground that the ques-  
9 tion was asked and answered.

10 MR. COSTIKYAN: Mr. Foley, I have got an out-  
11 line here. I haven't referred to this allegation of  
12 the complaint before.

13 MR. FOLEY: I am not referring to this  
14 allegation. He has given testimony about this before.

15 Do you want to go off the record and discuss  
16 the point of this?

17 MR. COSTIKYAN: All right, I will go off the  
18 record.

19 (Discussion off the record.)

20 Q Mr. Sagan, is it correct that the only acts  
21 of Lazard which you claimed injured Drayfus Fund con-  
22 sisted of its role in arranging the sale of stock to  
23 Mediabanca and arranging the sale of Mediabanca stock  
24 to Drayfus?

25 MR. FOLEY: And one other.

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Segan

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1 MR. COSTIKYAN: And what else?

2 MR. FOLEY: Its role as an intermediary.

3 MR. COSTIKYAN: In those transactions?

4 MR. FOLEY: Go back a little further. Go  
5 back to the heart of it.

6 A That which you described, Mr. Costikyan,  
7 in terms of the sales and acting as intermediary amongst  
8 all of these parties which was part and parcel of this  
9 transaction.

10 (Pause.)

11 BY MR. COSTIKYAN:

12 Q Let me put another question to you, Mr. Segan.  
13 Other than the transaction involving the sale of  
14 ITT stock to The Dreyfus Fund and the other transaction  
15 which you allege related to the pension funds, do you  
16 know of any fact on the basis of which you claim that  
17 Lazard did any of these things which you have alleged  
18 and which we have just been over in those paragraphs  
19 about depriving the fund of the services of the employees  
20 and so on.

21 A Yes.

22 Q What?

23 MR. FOLEY: If you know independent of what  
24 I said, testify to it.

25 A I said yes to the previous question, and now,

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1 when you say, "If so, what?" again I have to repeat the  
2 same answer, which would be that the source of my  
3 information is the investigation my attorney has  
4 conducted for me.

5 Q Other than what your attorney has told you,  
6 what is the answer?

7 A I have no other information.

8 MR. COSTIKYAN: Mr. Foley, I don't think there  
9 would be any point in going over any more of these  
10 allegations. It is clear to me that the answer in  
11 each case is that other than what you have told this  
12 witness, and other than what is in the newspapers, he  
13 has no facts and he isn't going to tell us what you  
14 told him unless the Court tells him to, so I think we  
15 will have to adjourn this until we can get a ruling  
16 on that point.

17 MR. FOLEY: I think that's a good idea.

18 MR. COSTIKYAN: And then we will pursue our  
19 remedies.

20 Does anybody else want to examine on what we  
21 have done so far?

22 (No response.)

23 (Discussion off the record.)

24 MR. COSTIKYAN: Is it stipulated that certi-  
25 fication, sealing and filing are waived and that the

witness may sign this deposition before any duly  
authorized notary public of the State of New York?

MR. FOLEY: So stipulated.

(Adjourned sine die.)

LEON SEGAN

Subscribed and sworn to)

before me this

day of

1972.

Notary Public

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2 CERTIFICATE

3 STATE OF NEW YORK )  
4 COUNTY OF NEW YORK ) ss:

5 I, EDWARD A. BARRON, a Notary Public within and  
6 for the State of New York, do hereby certify:

7 That LEON SEGAN, the witness whose deposition is  
8 hereinbefore set forth, was duly sworn by me and that  
9 such deposition is a true record of the testimony  
10 given by such witness.

11 I further certify that I am not related to any  
12 of the parties to this action by blood or marriage,  
13 and that I am in no way interested in the outcome of  
14 this matter.

15 IN WITNESS WHEREOF, I have hereunto set my  
16 hand this 30th day of June, 1972.

17  
18 Edward A. Barron  
19 EDWARD A. BARRON  
20  
21  
22  
23  
24  
25

## Partial Deposition of Plaintiff

WITNESS INDEX

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2 NamePage

3 Leon Segan

3

EXHIBIT INDEX

5

6 Defendant  
Lazard FreresPage

7 A (1d)

Newspaper clipping from the New  
York Times, Sunday, March 26, 1972  
edition, entitled "ITT Tax Ruling  
Linked to Complex Maneuvering".

6

10 B (1d)

Newspaper clipping from The New  
York Times of Tuesday, April 4, 1972  
entitled "Nader Aide Says Banking  
Firm Sold Much ITT Stock Before  
Trust Report" .

13

13 C (1d)

Newspaper clipping from The New  
York Times of Sunday, April 9, 1972,  
entitled "ITT Tax Rulings Queried  
By Nader".

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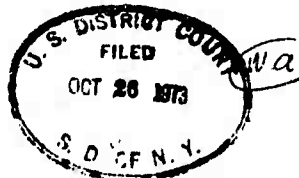
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23

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25

JUDGMENT



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
LEON SEGAN,

Plaintiff, :

: '72 Civil 1551(JMG)

-against-

: JUDGMENT

DREYFUS CORPORATION, MARINE MIDLAND  
BANKS, INC., DREYFUS MARINE MIDLAND  
MANAGEMENT CORP., INTERNATIONAL  
TELEPHONE AND TELEGRAPH CORP., LAZARD  
FRERES & CO., HOWARD STEIN, RICHARD A.  
M.C. JOHNSON, JULIAN M. SMERLING,  
LAWRENCE M. GREENE, FELIX G. ROHATYN,  
ANDRE MEYER, AND THE DREYFUS FUND, INC.,  
Defendants. :  
----- X

Plaintiff having moved the Court pursuant to Rule 26 and 27 of the Federal Rules of Civil Procedure for an order permitting the plaintiff to take discovery of the defendants for the purpose of framing the more definite statement which was ordered to be filed by the Court on May 11, 1973, The several defendants by their respective attorneys oppose the motion and cross-move pursuant to Rules 12(e) and 14(b) for an order striking the amended complaint and dismissing the action with prejudice because of the plaintiff's failure to comply with Rule 9(b) and the said order, and the said motions having come on to be heard before the Honorable John M. Cannella, United States District Judge, and the Court thereafter on October 25, 1973, having handed down its memorandum decision denying the motion of the plaintiff for discovery, and granting the motion of the defendants to strike the complaint and dismiss the action, but without prejudice, it is,

ORDERED, ADJUDGED AND DECREED, that defendants, DREYFUS CORPORATION, MARINE MIDLAND BANKS, INC., DREYFUS MARINE MIDLAND MANAGEMENT CORP., INTERNATIONAL TELEPHONE AND TELEGRAPH CORP., LAZARD FRERES & CO., HOWARD STEIN, RICHARD A.M.C. JOHNSON, JULIAN M. SMERLING, LAWRENCE M. GREENE, FELIX G. ROHATYN, ANDRE MEYER, AND THE DREYFUS FUND, INC., have judgment against the plaintiff, LEON SEGAN, dismissing the complaint without prejudice.

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Judgment

Dated: New York, N. Y.  
October 26, 1973

*Raymond F. Burghardt*  
Clerk

marked 40 as 4<sup>th</sup> 20